SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 486

TIGHE E. WOODS, ACTING HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, APPELLANT

vs.

THE CLOYD W. MILLER COMPANY, A CORPORATION, AND CLOYD W. MILLER

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

INDEX

772202—48——1

1 [Caption omitted.]

2 In the District Court of the United States for the Northern District of Ohio, Eastern Division

Civil Action No. 25073

TIGHE E. WOODS, ACTING HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, PLAINTIFF

vs.

THE CLOYD W. MILLER COMPANY, A CORPORATION, CLOYD W. MILLER, DEFENDANTS

Docket entries from July 11, 1947 to December 18, 1947

7/11/47—Complaint filed.
7/11/47—Motion for preliminary injunction filed.
7/11/47—Summons issued. 2 copies of summons with 3 copies of Motion to the Marshal.
7/18/47—Summons retn. & filed. Served 7/14/47. Fees $4.66.
7/18/47—Motion re preliminary injunction retn. & filed. Served 7/14/47. Fees $4.00.
7/21/47—Stipulation & Order granting defendant leave to move or plead by 9/1/47 filed, Jones, J. Noted 7/21/47. Notice waived.
7/21/47—Stipulation of facts filed.
7/21/47—Order of Preliminary Injunction defendant restrained from accepting rent in excess of that prescribed by the Controlled Housing Rent Regulation etc. filed & ent. Jones, J. Noted 7/21/47. True copy mailed to defendant.
8/28/47—Answer filed. Copy acknowledged 8/27/47.
9/29/47—Brief of defendants filed. Copy acknowledged 9/29/47.
10/31/47—Stipulation & Order extending time for filing plaintiff's brief to Dec. 1, 1947, filed, Wilkin, J. Noted 10/31/47. Notice waived.
11/14/47—Memorandum for Plaintiff filed. Copy served 11/14/47.
11/17/47—Stipulation & Order that Defendant may have leave to file reply brief by 11/19/47 filed, Jones, J. Noted 11/18/47. Notice waived.
11/19/47—Reply brief of defendants filed. Copy acknowledged 11/19/47.
11/20/47—Memorandum Opinion filed, Jones, J. (Preliminary injunction dissolved; complaint dismissed.) Copies to counsel.

11/28/47—Finding of facts and conclusion of Law lodged. Copy served 11/28/47.

3 12/ 1/47—Motion of plaintiff for substitution of party plaintiff filed. Copy mailed 11/28/47.

12/ 1/47—Order substituting party plaintiff filed. Jones, J. Noted 12/1/47.

12/ 1/47—Findings of Fact and Conclusions filed, Jones, J.

12/ 1/47—Order finding Housing & Rent Act of 1947 unconstitutional; dissolving temporary restraining order and dismissing complaint at costs of plaintiff filed & ent. Jones, J. Noted 12/1/47.

12/ 8/47—Motion of plaintiff for stay of execution filed.

12/ 8/47—Memorandum Opinion filed, Jones, J. (Stay of execution granted for 30 days from order to stay.) Copies to counsel.

12/ 8/47—Order staying execution of order entered Dec. 1, 1947, dissolving preliminary injunction and dismissing complaint until appeal therefrom is docketed in Supreme Court, but not to exceed thirty days from date hereof, filed & ent., Jones, J. Noted 12/8/47. Copies to counsel.

12/17/47—Defendants' Agreement of Jurisdiction filed.

12/17/47—Petition for Appeal filed.

12/17/47—Assignment of Errors filed.

12/17/47—Statement re Jurisdiction filed.

12/17/47—Order allowing appeal to the Supreme Court of U. S. filed & ent., Jones, J. Noted 12/17/47.

12/17/47—Citation issued.

12/17/47—Statement re Para. 3, Rule 12 of Supreme Court Rules filed.

12/17/47—Praecipe for Transcript of Record filed.

12/17/47—Proof of Service of above papers filed.

12/18/47—Transcript of Proceedings filed.

4 In the District Court of the United States for the Northern District of Ohio, Eastern Division

[File endorsement omitted]

Civil Action—File No. 25073

FRANK R. CREEDON, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, PLAINTIFF

vs.

THE CLOYD W. MILLER COMPANY, A CORPORATION, CLOYD W. MILLER, 3065 LINCOLN BOULEVARD, CLEVELAND HEIGHTS, OHIO, DEFENDANTS

Complaint

Filed July 11, 1947

1. Plaintiff is presently the duly appointed, qualified and Acting Housing Expediter of the Office of the Housing Expediter.

2. Plaintiff invokes the jurisdiction of this Court under subsection (b) of section 206 of the Housing and Rent Act of 1947, hereinafter referred to as the "Act".

3. At all times mentioned herein, there was continuously in full force and effect, pursuant to section 204 of the Act, the Controlled Housing Rent Regulation (12 F. R. 4331) and the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments (12 F. R. 4302), hereinafter called the "Regulations", establishing maximum rents for the use and occupancy of controlled housing accommodations within the Defense-Rental Area of Cleveland, Ohio, which include premises 1871 E. 97th Street and 9797 Newton Avenue, City of Cleveland, owned and/or operated by the defendants.

4. In plaintiff's judgment, the defendants have engaged in or are about to engage in acts and practices which constitute or will constitute a violation of section 206 (a) of the Act, section 2 (a) of the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments, and section 2 (a) of the Controlled Housing Rent Regulation issued pursuant to the Act, in that while the said Act and Regulations were in effect and the aforestated maximum rentals prescribed thereunder were in effect, defend-
ants demanded from the tenants of the aforestated
5 dwelling units for their use and occupancy thereof, rates of rental in excess of the maximum rates of rental established and permitted by the said Act and Regulations.

5. At all such times, the Regulations prescribed the following maximum rentals for the dwelling units in the above premises as listed below:

1871 East 97th Street

Apt. No. 1	$25.00 per month.
No. 2	30.00 per month.
No. 3	22.50 per month.
No. 4	30.00 per month.
No. 5	30.00 per month.
No. 6	30.00 per month.
No. 7	50.00 per month.
No. 8	55.00 per month.
No. 9	55.00 per month.

9797 Newton Avenue

Apt. No. 10	$55.00 per month.
No. 11	50.00 per month.
No. 12	50.00 per month.
No. 13	50.00 per month.
No. 14	50.00 per month.
No. 15	55.00 per month.

1871 East 97th Street

Room No. 16	$3.50 per week.
No. 17	3.50 per week.
No. 18	3.50 per week.
No. 19	3.50 per week.
No. 20	3.50 per week.

Wherefore, the plaintiff demands:

1. A preliminary and final injunction enjoining and restraining the defendants, their agents, servants, employees and all persons in active concert or participation with the defendants from:

(a) Soliciting, demanding, accepting, or receiving any rent in excess of the maximum rent prescribed by the Controlled Housing Rent Regulations as heretofore or hereafter amended, or in excess of the maximum rent permitted by any other Regulation or Order heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended or extended or superseded, or from otherwise violating the Regulations as
6 heretofore or hereafter amended, or from violating any other Regulation heretofore or hereafter adopted pursuant to the Act as heretofore or hereafter amended or extended.

2. Such other, further and different relief as to the Court appears warranted in the premises.

Dated: July 1[illegible], 1947.

(S) PAUL MARSHALL,
Chief, Rent Enforcement Division,

(S) Sanford S. Simms,
SANFORD S. SIMMS,
Enforcement Attorney,

(S) A. L. Greenspun,
A. L. GREENSPUN,
Enforcement Attorney,
Of Counsel for Plaintiff.

Address: Office of the Housing Expediter, Office of Rent Control, Regional Rent Office, Enforcement Division, 322 Union Commerce Building, Cleveland 14, Ohio. Telephone: Cherry 7900.

7 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Motion for preliminary injunction

Filed July 11, 1947

Plaintiff moves the Court for a preliminary injunction:

1. Enjoining defendants, their agents, servants, employees and all persons in active concert or participation with the defendant, from:

(a) Soliciting, demanding, accepting or receiving any rent in excess of the maximum rent prescribed by the Controlled Housing Rent Regulations as heretofore or hereafter amended, or in excess of the maximum rent permitted by any other Regulation or Order heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended or extended or superseded, or from otherwise violating the Regulations as heretofore or hereafter amended, or from violating any other Regulation heretofore or hereafter adopted pursuant to the Act as heretofore or hereafter amended or extended.

The within motion is made upon the grounds and for the reasons set forth in the affidavit of A. L. Greenspun, Attorney for the Housing Expediter, which affidavit is hereby incorporated herein by reference and made a part hereof.

Dated: July 10, 1947.

(S) PAUL MARSHALL,
Chief, Rent Enforcement Division,
(S) Sanford S. Simms,
SANFORD S. SIMMS,
Enforcement Attorney,
(S) A. L. Greenspun,
A. L. GREENSPUN,
Enforcement Attorney,
Of Counsel for Plaintiff.

Address: Office of the Housing Expediter, Office of Rent Control, Regional Rent Office Enforcement Division, 322 Union Commerce Building, Cleveland 14, Ohio. Telephone: CHerry 7900.

8 *Notice of hearing*

To THE CLOYD W. MILLER COMPANY, A CORPORATION,
CLOYD W. MILLER, *3065 Lincoln Boulevard,*
Cleveland Heights, Ohio.

Please take notice that the undersigned will bring the within and foregoing Motion on for Hearing before this Court, at the Federal Building, City of Cleveland, State of Ohio, on the 21st day of July 1947 at 10:30 o'clock a. m., or as soon thereafter as counsel can be heard.

Dated this 10th day of July 1947.

(S) PAUL MARSHALL,
Chief, Rent Enforcement Division,
(S) Sanford S. Simms,
SANFORD S. SIMMS,
Enforcement Attorney,
(S) A. L. Greenspun,
A. L. GREENSPUN,
Enforcement Attorney,
Of Counsel for Plaintiff.

Address: Office of the Housing Expediter, Office of Rent Control, Regional Rent Office, Enforcement Division, 322 Union Commerce Building, Cleveland 14, Ohio. Telephone: Cherry 7900.

U. S. Marshal's return

THE UNITED STATES OF AMERICA,
Northern District of Ohio:

Received this writ at Cleve., O., on 7/11/47 and on 7/14/47 at Cleve. Hts., O., I served the within named Cloyd W. Miller, by handing to his sister-in-law, Miss G. L. Burke, personally and at the same time I served the within Cloyd W. Miller Co., by handing to Miss G. L. Burke, Sect'y & Treas. of said Cloyd W. Miller Co., personally a true copy of this writ.

Service: $4.00.

JOHN WEIN,
U. S. Marshal.
NORMAN BLACK,
Deputy.

[File endorsement omitted.]

9 In United States District Court

[Title omitted.]

Affidavit of A. L. Greenspun in support of plaintiff's motion for preliminary injunction

STATE OF OHIO,
County of Cuyahoga, ss:

A. L. Greenspun, being first duly sworn, deposes and says:

1. At all times mentioned herein, he has been employed as an Attorney by the Office of the Housing Expediter in the Cleveland Regional Office thereof; that he makes this affidavit in support of the within Motion for Preliminary Injunction prayed for by plaintiff.

2. On July 8, 1947, affiant, in his official capacity aforesaid, commenced and directed an investigation of certain alleged violations by defendants herein of the Rent Regulation for Housing and the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments, effective under the Housing and Rent Act of 1947. Such investigation was continued until the date hereof.

3. The aforesaid Regulations, effective under the Housing and Rent Act of 1947, provides in substance in part that, regardless of any contract, agreement, lease or other obligation heretofore or hereafter entered into, no person shall offer, demand or receive any rent for or in connection with the use or occupancy on and after the effective date of said Regulations, of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by these Regulations.

10 4. The defendants, The Cloyd W. Miller Company, a Corporation, and Cloyd W. Miller, individually, were and are landlords and/or operators of housing accommodations subject to the Regulations at all times material herein and located within the Cleveland, Ohio Defense-Rental Area and described as follows: 1871 East 97th Street, Apartments 1 to 9 inclusive, 9797 Newton Avenue, Apartments 10 to 15 inclusive, 1871 East 97th Street, Rooms 16 to 20 inclusive, Cleveland, Ohio.

5. Said defendants have demanded and unless enjoined and restrained, will continue to demand and will receive for the use or occupancy of said housing accommodations from the tenants thereof, rates of rental in excess of the maximum rentals established by the Regulations. The amount so demanded increases the rent of apartment units 1 to 15, inclusive by forty percent (40%), and increases the rent of room units 16 to 20, inclusive by sixty percent (60%), in excess of the maximum legal rent thereof.

A copy of such demand, upon said tenants, is attached hereto marked Exhibit I and made a part hereof.

(S) A. L. GREENSPUN.

Sworn to before me and subscribed in my presence this 10th day of July 1947.

(S) SOL W. WYMAN,
Notary Public.

My commission expires May 1, 1950.

11 *Exhibit I to affidavit*

CLEVELAND 18, OHIO, *July 2, 1947.*

To all tenants of
The Cloyd W. Miller Co.,
1871 East 97th Street,
Cleveland, Ohio.

GENTLEMEN: The stinkers in Washington have enacted a new Rent law playing hob further with rental property; the most cowardly smart trick they could cook up in five months of discussion and debate. Ostensibly for the dear people's benefit, let us see how the people will fare. The stinkers also enacted a law to raise their own salaries $2,500 annually, tax exempt, while being *smothered* with evidence of enormously increased costs of rental property operation.

The new Rent law asks us and you to gamble on their conduct next February. Do you trust them? We do not. Will they let this new law die February 29, 1948, or extend it further?

If we would accept 15% increase now you would enjoy rent to December 31, 1948, for 18 more months, at 40% below what your space is worth in a free market. No thanks. No temporary rabbit could have been pulled out of any hat to assure more dissatisfaction among both tenants and landlords. We both are pawns merely of Congressmen in this game of trying to escape economic responsibility for rental property.

Since we, as yet, own the property, we will not ask you whether you "want to pay more." When, if ever, the time comes that our property is restored to our control we will advise you what your rents will be, based upon the true free market value which kept full occupancy in this building for thirty years, good times and bad.

The stinkers in Washington are only after your votes. They do not give a damn for your social or economic welfare, or *your housing standards.* They all know the only way housing standards may be improved, costs lowered, more buildings built, but none of them have the guts to express themselves publicly. This is their cloakroom prerogative.

Rent control in five years has permitted and encouraged you *to live up* an important share of your present home—that visible sign of dignity, cleanliness, good repair, wholesomeness which distinguished our apartment house for years. We expect you will be leaving as soon as convenient and we do not blame you. If you buy you will realize fully what increased costs mean. Likewise, if you rent new property you will realize this. Meanwhile, the building you occupy has been deprived of physical maintenance necessary to keep it up *for the future*. This maintenance loss seems at first glance to be your immediate gain but that is the deception which has assured the stinkers your votes. Actually, you have lost this sum by reduction of general housing standards which may be irrecoverable in your day. This will be clearer to you when you leave us—whever you go. Who is the loser? You or the landlord? The total loss to the Nation due to undone maintenance during rent control aggregates over $20,000,000,000. Who do you think will restore this sum by sweat and tears? It is the income from these buildings which maintain them and encourage new investors to build. When income is not sufficient, rental property sickens and dies.

Rent control is a ghastly economic deceit, a socialistic gesture to redistribute wealth, the effect of which is to destroy, not create. The renters are the real losers. It has been so for 25 years in England and France, now wallowing in the gutters of socialism. Peoples in other lands for centuries have been led into social and economic decline by paternalistic governments. Rent control is one of the steps. It looks like our people are moving rapidly toward more and more government regimentations, the last election
12 notwithstanding. Landlords are powerless to stop this trend; in fact, as victims of this revolutionary public exploitation, we are apt to prolong it. Until the cow is sucked dry. Unrestricted competition and a free market always housed Americans better than peoples elsewhere in the world. I knew last February and March in Washington that the 32,000,000 votes of tenants would scare the stinkers sufficiently to retain rent control. They were looking for "outs." There are none. If you want better and cheaper housing you will have to register your disapproval of this socialism. Temporarily you will have to pay more rent until the market supplies a stable vacancy ratio. Shortages created by the war and labor monopolies' subversive practices cannot be cured overnight.

We have lost interest in our building completely. Six or seven years ago we made plans to modernize it, including kitchens and bath rooms, to bring it up to present day standards insofar as possible. This building could very well house our class of tenants for many years at reasonable prices, but the politicians have ruled otherwise. They have decreed its degrading and reduction of the

standards we long maintained. We shall dispose of the property when opportunity offers, as we do not intend to operate a flop house, and that is all we will have very soon at the rate of debilitation the building has suffered during rent control. The public teat suckers in Washington got their stomachs filled with their $2,500 per year raise—but they won't fill yours for any great while out of this property because very soon there will be nothing more to consume that will satisfy your tastes.

It is revolting to me what a hell of an economic debacle the New Deal achieved. The stinkers in legislative bodies seem not to have the courage it takes *at cross roads in the lives of nations.* Maybe the people who elect them stink a little themselves. As Voltaire said, "It is hard to free fools from the chains they revere."

This social nonsense of preempting our property has ceased to be funny. *Owners*, we set our charges for space for August 1947 and thereafter until further notice at 40% higher for suites, and 60% higher for furnished rooms. We shall hold each tenant responsible for the increase, and if possible make you all parties to a constitutional test of the law. You have already accepted about $10,000 of rebates in rent below fair competitive market values, approximately one-third of which has accrued since the war emergency is over. This outrageous public expropriation of our property reaches the pinnacle of absurdity in the device which transfers the burden upon us to "*ask you what you want to pay.*" We will tell you later how the advances may be escrowed so the case may avoid any prosecution reprisal against us by the vicious stooges in government who so gleefully undertake the task to which they have been assigned.

Sincerely,

CLOYD W. MILLER,
President, The Cloyd W. Miller Co.,
3065 Lincoln Boulevard, Cleveland 18, Ohio.

Copy to each Congressman on Banking and Currency Committees of Senate and House.

Copies to press.

13 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Stipulation of facts

Filed July 2., 1947

Duly authorized counsel for the parties herein do hereby stipulate that: for the purpose of the Motion for Preliminary Injunction

1. The defendant, The Cloyd W. Miller Company, a corporation, is the owner of the housing accommodations located at 1871 East 97th Street and 9797 Newton Avenue, Cleveland, Ohio, within the Cleveland Defense-Rental Area; and that the defendant, Cloyd W. Miller, is the president and duly authorized agent of The Cloyd W. Miller Company, a corporation; and that The Cloyd W. Miller Company, a corporation, and Cloyd W. Miller individually are the landlords of said housing accommodations.

2. The maximum legal rents for the said housing accommodations, as fully set forth in the Complaint, and as referred to in plaintiff's motion for a preliminary injunction, are correct, having been so registered by the defendants, and are the maximum legal rents as established in the Rent Regulation.

3. The Housing and Rent Act of 1947 was effective July 1, 1947 and the Controlled Housing Rent Regulation and the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments became effective July 1, 1947.

4. The letter dated July 2, 1947, addressed to "All tenants of The Cloyd W. Miller Company, 1871 East 97th Street," attached to the affidavit of A. L. Greenspun and to the motion for preliminary injunction, is a true and correct copy of the letters prepared and mailed by the defendants to all of the tenants residing in the housing accommodations herein referred to.

14 5. The signing of this Stipulation shall in no way be construed as a waiver by the defendants of their right to contest the constitutionality of the Housing and Rent Act of 17 or the Emergency Price Control Act of 1942, as amended.

PAUL MARSHALL,
Chief, Enforcement Division.

(S) Sanford S. Simms,
SANFORD S. SIMMS,
Enforcement Attorney.
Of Counsel for Plaintiff.

(S) Paul Knight,
PAUL S. KNIGHT,
Of Counsel for Defendant.

15 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Order of preliminary injunction

Filed July 21, 1947

This cause came on for hearing on motion of plaintiff for preliminary injunction herein, affidavit, statements of counsel, and evidence submitted in open court.

In consideration whereof the Court finds that the plaintiff's motion is well founded and that defendants have engaged in acts and practices which constitute violations of the provisions of the Housng and Rent Act of 1947, and the Controlled Housing Rent Regulation and the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments, issued pursuant to said Act.

The Court further finds that the defendants, The Cloyd W. Miller Company, a corporation, and Cloyd W. Miller are the landlords of housing accommodations situated at 1871 East 97th Street and 9797 Newton Avenue, Cleveland, Ohio, within the Cleveland Defense-Rental Area; and that the defendants, The Cloyd W. Miller Company and Cloyd W. Miller, since the effective date of said Regulations, have demanded from tenants for the use and occupancy of said housing accommodations rent in excess of the maximum legal rent established therefor by said Regulations; in consequence whereof, the Court finds that the defendants have violated the Housing and Rent Act of 1947 and the Regulations aforesaid, issued pursuant to said Act.

Now, therefore, it is Ordered, Adjudged, and Decreed that the defendants, The Cloyd W. Miller Company, a corporation, and Cloyd W. Miller, their agents, servants, employees, and all
16 persons in active concert or participation with said defendants be, and they are hereby, enjoined from directly or indirectly soliciting, demanding, accepting or receiving any rent in excess of the maximum rent prescribed by the Controlled Housing Rent Regulation and the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments, as heretofore or hereafter amended, or in excess of the maximum rent permitted by any other Regulation or Order heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended or extended or superseded.

And this order shall be and remain in full force and effect until the further order of the Court.

(s) PAUL JONES,
Judge, United States District Court.

Entered: _____, 1947.

Approved and notice by the Clerk is hereby waived.

PAUL MARSHALL,
Chief, Enforcement Division,
SANFORD S. SIMMS,
Enforcement Attorney,
Of Counsel for Plaintiff.

PAUL S. KNIGHT,
Of Counsel for Defendant.

17 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Answer

Filed Aug. 28, 1947

FIRST DEFENSE

1. The complaint fails to state a cause of action against defendants upon which relief can be granted.

2. This honorable court is without jurisdiction of the subject matter set forth in the complaint, or to grant relief thereon for the reason that Sections 206, 202, 204, and 209 of the Housing and Rent Act of 1947 are invalid and contravene the Constitution of the United States, as more particularly set forth below.

SECOND DEFENSE

3. Defendants admit that they have notified the tenants in the housing accommodations at No. 1871 East 97th Street and 9797 Newton Avenue, Cleveland, Ohio, that the rents for such accommodations are increased in excess of the rentals set forth in Paragraph 5 of the complaint but deny that they intend to engage in any acts or practices which constitute a violation of the Act, while it is in effect.

4. Defendants admit that the regulations referred to in Paragraph number 4 of the complaint, were, if valid, in full force and effect at the times mentioned but assert that these regulations are invalid and void and of no effect and are violative of the Constitution of the United States, as more particularly set forth below.

5. Defendants admit that the rentals listed in Paragraph number 5 of the Complaint are the maximum rentals attempted to be established under the regulations and the Act for defendant's housing accommodations, but assert that both the establishing
18 thereof and the maximum rentals are invalid, void and of no effect and are in violation of the Constitution of the United States as more particularly set forth below.

THIRD DEFENSE

6. Defendant, The Cloyd W. Miller Company, is the owner and operator of an apartment building situated at East 97th Street and Newton Avenue in the City of Cleveland, County of Cuyahoga and State of Ohio, in which are the housing accommodations specified in the complaint and its sole business and operation is the renting of these suites and rooms and servicing and maintaining

the building and suites, and its entire and sole income is derived from the rentals.

7. Defendant, The Cloyd W. Miller Company, is a corporation organized and existing under and by virtue of the laws of the State of Ohio.

8. Defendant's building is situated entirely within the State of Ohio and defendant's business and operations are conducted exclusively within the State of Ohio and are strictly intra-state in character, the right to regulate which is reserved by the Constitution of the United States to the States.

9. The Housing and Rent Act of 1947 fixes the maximum rents that defendant may demand and receive for its housing accommodations at the maximum rents established under the Emergency Price Control Act of 1942, which are approximately the current rentals as of July 1, 1941, and the Act and the regulations thereunder prevent defendant and prohibit it from demanding and receiving a fair rental or a rental that is the fair market value for its suites and rooms, and interfere with and prohibit its proper, reasonable and legal use of its property.

10. The income from rentals that defendant derives month by month from its apartment building is its property and is part and parcel of its ownership of its building and each denial by the Act and regulations of its right to the reasonable market value rental is the taking of its property without due process of law.

11. Defendant's apartment building has been occupied at all times since its construction at practically one hundred per cent of its capacity. Since the maximum rents were established at July 1, 1941, levels, the expense of heating, servicing, and maintaining the building, suites, and rooms has greatly increased and the net income of defendant from such rentals has decreased, although the suites and rooms are readily rentable, but for the Act, at substantially higher, but reasonable, rentals. The effect of the Act and the regulations is to take defendant's private property without due process of law and without just, or any, compensation.

FOURTH DEFENSE

12. Title II of the Housing and Rent Act of 1947, in part, defines housing accommodations; controlled housing accommodations and defense rental areas, and prescribes therefor maximum rentals, limits and restricts rentals, restricts the owners of such rental property, both as to the amount of rentals the owner can demand and receive and as to the recovery of possession of such rental property and authorizes regulations and legal action for the enforcement thereof, and in these respects, as well as other respects, violates the Constitution of the United States and is void and of no effect in that the Act exceeds the power of the Congress,

violates the Fifth and the Tenth Amendments thereto and is not authorized by any other provision of the Constitution, and violates other provisions of the Constitution.

13. The Act and the regulations concern residential property, controlled housing accommodations, exclusively within the territorial limits of the several States, the regulation of which is reserved by the Constitution of the United States to the States, and the Constitution does not, either expressly or impliedly, grant to the Congress the power to regulate or legislate concerning such matters, and the Act and the regulations violate the Tenth Amendment to the Constitution.

14. Section 202 (c) of the Act in defining "controlled housing accommodations" upon which the restrictive provisions of the Act operate, excepts therefrom any housing accommodations (1) in any hotel, (2) in any motor court or tourist home, (3) any that were completed or converted on or after February 1, 1947, and (4) any that were not rented on February 1, 1945, or thereafter to and including January 31, 1947, and the Act thus discriminates against defendant and violates Section 11 of Article IV of the Constitution of the United States and denies defendant the equal protection of the law.

15. Sections 202, 204, 205, 206 and 209 of the Act and the regulations thereunder, deny defendant, to its irreparable damage, its lawful right to sell the use of its housing accommodations in a lawful and reasonable manner and to secure therefor the reasonable market value, and deprive defendant each month of the difference between a rental that is the fair market value and the maximum rent, and are further unconstitutional and void in that they violate the Fifth Amendment to the Constitution of the United States, thus taking defendant's private property without due process of law and without just, or any, compensation.

16. Defendants in order to avoid unnecessary repetition, refer to and include in each paragraph and in each defense the statements, denials, admissions and allegations in each of the other paragraphs and defenses.

17. Having fully answered, defendants pray that the complaint be dismissed and that they be sent hence with their costs.

(s) Paul S. Knight,
PAUL S. KNIGHT,
Attorney for the Defendants, 806 Williamson Building, Cleveland, 14, Ohio, PRospect 3438.

Plaintiff acknowledges receipt of copy of Answer of Defendants this 27th day of August 1947.

(S) SANFORD S. SIMS,
per J. J. GOULD,
Attorney for Plaintiff.

21-A In the District Court of the United States for the Northern District of Ohio, Eastern Division

No. 25073—Civil Action

FRANK R. CREEDON, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, PLAINTIFF

vs.

THE CLOYD W. MILLER COMPANY, A CORPORATION AND CLOYD W. MILLER, DEFENDANTS

Transcript of hearing

Filed Dec. 18, 1947

Transcript of proceedings before Hon. Paul Jones, Judge of said Court, on Monday, July 21, 1947, 10:00 o'clock A. M., on motion for preliminary injunction.

Appearances

On behalf of the plaintiff: Sanford S. Simms, Esq., Paul Marshall, Esq.

On behalf of the defendant: Paul S. Knight, Esq.

21-B THE COURT. All right, what is the matter for this morning?

Argument on behalf of plaintiff

Mr. SIMMS. If the Court please, the complaint in this action, together with the motion for preliminary injunction, has been filed by the Government against Cloyd W. Miller Company, a corporation, and Cloyd W. Miller, individually, who is the president and duly authorized agent of the Cloyd W. Miller Company. The defendants are the landlords of certain housing accommodations located at 1871 East 97th Street and also known as 9797 Newton Avenue in the City of Cleveland.

The defendants, Your Honor, did on July 2nd—that is they dated a letter July 2nd and distributed these letters to all of the tenants in the subject housing accommodations, as well as sent a copy to all of the Congressmen on the Banking and Currency Committee of the Senate and House, and also to the press. It is this letter that is the basis, Your Honor, of the complaint and the motion for the preliminary injunction which has been filed.

21-C Our action is brought pursuant to Section 206 (a) and (b) of the Housing and Rent Act of 1947 which became effective on July 1, 1947. It is our contention that the acts of the defendants in preparing, writing, mailing this letter, which makes

certain demands upon tenants, is in direct violation of the Housing and Rent Act of 1947 and is in direct violation of the Controlled Housing Rent Regulation, the rent regulation which controls rooming houses and other establishments. The two regulations which I refer to were issued by the Housing Expediter pursuant to the authority vested in him by the Housing Act and the Rent Act of 1947.

Section 206 (a) of the Act provides that it shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under Section 204.

Section 204 provides, in part, that during the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept or re-
21-D ceive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947.

The defendants, through counsel, together with counsel for plaintiff, entered into a stipulation, and paragraph two of the stipulation provides that the maximum legal rents for the said housing accommodations, as fully set forth in the complaint, and as referred to in plaintiff's motion for a preliminary injunction, are correct, having been so registered by the defendants and are the maximum legal rents as established in the Rent Regulation.

Therefore, whatever the registered rents were on June 30th, 1947, for the several furnished and unfurnished apartments in the housing accommodations described in the complaint and the motion were in effect on June 30, 1947.

Section 2 (a) of the Controlled Housing Rent Regulation, which appears, Your Honor, in volume 12 of the Federal Register on Page 4331, reads that regardless of any contract,
21-E agreement, lease, or other obligation, heretofore or hereafter entered into, no person shall offer, demand, or receive, any rent for or in connection with the use or occupancy on and after the effective date of this regulation of any housing accommodation within the defense rental area higher than the maximum rental provided by this regulation, and no person shall offer, solicit, attempt or agree to do any of the foregoing. Lower rents than those provided by this regulation may be demanded or received.

Section 2 (a) of the Rent Regulation for Controlled Rooms in Rooming Houses and other Establishments, the entire regulation appearing also in volume twelve of the Federal Register on page 4302, Section 2 (a) also provides that regardless of any contract, agreement, lease, or other obligation heretofore or hereafter en-

tered into, no person shall offer, demand, or receive, any rent for or in connection with the use or occupancy on and after July 1, 1947, of any rooms subject to this regulation and within the defense rental area higher than the maximum rents provided by this regulation, and no person shall solicit, attempt to do or
21-F agree to do any of the foregoing. That is, in part, the regulation.

Section 206 (b) is the authority, Your Honor, for the bringing of this action, and it provides that whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which will constitute a violation of subsection (a), which I read to Your Honor, he may make application to any Federal, State, or Territorial Court of competent jurisdiction for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice, a permanent or temporary restraining order of the Court shall be granted without bond.

The letter which I referred to, Your Honor, which was dated July 2, 1947, and which was mailed by the defendants on or about July 6th or 7th, 1947, is, I believe, Your Honor, without any equivocation or peradventure of doubt a vicious diatribe
21-G replete with invectives and bitterness, and purely a harangue upon the congressmen who participated in the enactment of the Act, upon the persons who have been delegated and designated to administer the Act, and upon such other employees who, along the line, have as a duty to administer the Act and to enforce it, as well as a harangue upon the Act itself. I refer specifically, Your Honor, to the last paragraph in the letter, which reads:

"This social nonsense of preempting our property has ceased to be funny. Owners, we set our charges for space for August 1947 and thereafter until further notice at 40% higher for suites, and 60% higher for furnished rooms. We shall hold each tenant responsible for the increase, and if possible make you all parties to a constitutional test of the law. You have already accepted about $10,000 of rebates," and so on. That, Your Honor, is a specific and direct demand upon the several tenants occupying both the furnished and unfurnished suites in the housing accommodation referred to in the complaint, definitely and unalterably fixing the rent for the unfurnished suites to be 40% higher than the
21-H maximum legal rents and 60% higher for the furnished rooms, and there are several furnished rooms and several unfurnished rooms in these housing accommodations. There can be no doubt but what the landlord intended to extract from the

tenants this increased rent, which is diametrically opposed to the purpose of the regulation, as set forth in the rent regulation.

Incidentally, the stipulation further provides—and I presume the Court has read it——

The COURT. Yes.

Mr. SIMMS. That the Housing and Rent Act of 1947 was effective July 1, 1947 and that the Controlled Housing Rent Regulation and the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments became effective July 1, 1947. It is further stipulated that the letter dated July 2, 1947, and addressed to all tenants of the Cloyd W. Miller Company, 1871 East 97th Street, a copy of which letter is attached to the affidavit of Mr. A. L. Greenspun, attorney in our office, which affidavit is part of the

21–I motion for preliminary injunction, is a true and correct copy of the letters prepared and mailed and issued by the defendants.

It is my understanding that the only contest to this—rather, that the only reason that no consent to the entry of a preliminary injunction by the defendant was because they are contesting the constitutionality of the Act. I am not completely unmindful, Your Honor, that you realize the import of this case. I don't think it is any longer a local incident. In fact, this case has been publicized to great extent in the newspapers not only in Cleveland, but throughout this entire region, and I might say, further than that, that the various agencies have gathered up the information concerning this case, to be publicized. I feel that the eyes and ears of all landlords and tenants are today focused in this direction wanting to know what will happen to the landlord who indiscriminately demands a rent for the next rental period which is in excess of that permitted by the Act and the Regulation, when the landlord has not complied with the regulation and has not stayed within the limits of increase which the Act permits.

21–J I believe the tenants too will wonder "what is going to become of us if these demands are indiscriminately made, and will we have to pay these excess demands, these demands for excess rent?"

It is on this basis and these contentions, Your Honor, that I submit that the order for preliminary injunction should be entered against the defendants who are the landlords of these accommodations.

Colloquy

The COURT. The stipulation does not admit that this property is in the defense area as understood by the definition of the Act. Is that conceded?

Mr. KNIGHT. May it please Your Honor, we make no contest on any of the facts.

The COURT. I see.

Mr. KNIGHT. We appear here this morning only for the purpose of saving our rights, at the proper time to contend that the law under which the rents are fixed, and so on, is unconstitutional.

The COURT. That has been stated to me in an unofficial way, but I didn't want to assume that was so without your statement.

21-K Mr. KNIGHT. That is entirely correct. I understand the law is that the question of constitutionality must be raised at the first opportunity.

The COURT. That's right.

Mr. KNIGHT. And that is the reason we are here this morning contesting this entry.

The COURT. Well, was it the thought of either or both sides that this Court hear this question and decide it at once?

Mr. SIMMS. No, Your Honor; I don't think we expected the Court to make the determination so far as the case is concerned at this time. We are only here to get the preliminary injunction, to remain in effect until such time as that issue has been determined by this Court.

The COURT. If the questions of constitutionality of the law are to be deferred until the parties can adequately present their sides, then for the purposes of the preliminary injunction the law stands. I see no other way to handle the matter. I do not understand that the defendants are opposing the preliminary injunction, but they do not desire to agree to it pending the disposition of the ultimate question.

21-L Mr. KNIGHT. I think that's a correct statement, Your Honor. I do want to state, of course, that the defendants have no intention of doing anything further than what has been done, which might be deemed a violation of the Act. We are not going to attempt to raise any further question.

The COURT. I have, of course, in anticipation of the hearing, made some brief examination of both the law and the decisions of the Courts in respect to the preceding law, the Rent Control Act of 1946, which is referred to in this Act, and I have formulated in my own mind a query upon which I think the question may ultimately turn. If this Act can be held to stem from the war powers of the Congress, then I think there is adequate precedent by decisions of the higher Court that the Act would be considered as within the power of Congress validly to enact. If the statute has, in a legislative sense or in fact, been severed from the congressional war powers and is a new act standing by itself, enacted in times in which no emergency exists, even though it be called an emergency, then the question is whether it is

21-M within the constitutional power of Congress to regulate local affairs, such as local rents.

That, it seems to me, at least at first hand, to be the question that is involved in the consideration of the constitutionality of this statute. Do I make myself clear as to where I think the matter turns?

Mr. KNIGHT. Yes.

The COURT. Do you have any suggestion now that I am not directing my processes along the right lines that must be followed, or will it be the contention of the Government that regardless of whether this law is the child of the congressional war powers, still, it being a law of Congress, Congress having stated that an emergency exists without defining what the emergency is, that it still has constitutional validity? Is that the position?

Mr. SIMMS. I understand the reasoning of the Court and, of course, the Government's stand will be that it is constitutional in every respect, both from the standpoint of Congress having the right to enact it and the fact that an emergency still exists today, a state of emergency has not been declared to have ended

21-N as prescribed by the War Powers Act.

The COURT. Well, will it be the contention of the Expediter that it does stem from the war powers of Congress, and that the emergency referred to is the emergency resulting from the war and the dislocation resulting therefrom?

Mr. SIMMS. Yes, that's true.

The COURT. That's what I want to have some help on.

Mr. SIMMS. Yes, Your Honor.

The COURT. Because, to recapitulate or restate what I said before, it seems to me, as a matter of first impression, that if this statute is to be considered a new act, independent of any congressional war powers, that then the question comes down to whether or not Congress has any constitutional power to regulate local rents merely by saying an emergency exists without defining what emergency. That's the point that is going to trouble me.

Now, it is true that in an early case on the old Emergency Price Control Act, I believe in 1942, which, of course, was enacted during the war, the Emergency Court held that the Congress had

21-O the power under the constitution to fix maximum rents for housing accommodations. Now, that Act expired, the Act of 1942, and it was followed by the so-called Emergency Act of 1946. That may not be the exact title but the housing act of 1946. I notice that this Act does not say it's an amendment to the Act of 1946, or that it's an amendment to the Act of 1942. It's title two of an act called the Housing and Rent Act of 1947.

Mr. SIMMS. Yes, that's correct.

The COURT. Under declaration of policy, section 201 (a) it states that Congress hereby reaffirms the declaration in the Price Control Extension Act of 1946 that unnecessary or unduly prolonged control over rents would be inconsistent with the return to a peacetime economy and would tend to prevent the attainment of the goals herein declared. A declaration of policy such as that doesn't mean that it is the policy of Congress to extend the control of 1946 or 1942. That's a policy of Congress to reduce the controls. That's one of the questions that's going to bother me. It is true it does refer, down in subsection (b) to this fact, that at the same time Congress recognizes that an emergency exists and
21-P that for the prevention of inflation or for the achievement of a reasonable stability for the fair level of rents during the transition period, as well as the attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in defense rental areas. That is the only word in the section that gives a hint that they are acting under the war powers.

Mr. SIMMS. Yes, sir.

The COURT. The fact that they apply it to housing accommodations in defense areas. Except for that, there is no definition of what they mean by an emergency. Well, I'm just talking, throwing out those ideas for the benefit of counsel.

Mr. SIMMS. We welcome them, Your Honor.

The COURT. Of course, there is the other rule which this Court must consider, and that is in determining the constitutionality or unconstitutionality of an act of Congress the Lower Courts have been enjoined to uphold, generally, the acts of Congress unless there is a doubt which amounts to a conviction that the statute cannot stand. In other words, stating it another
21-Q way, if the Lower Court has some doubt as to the constitutionality of a statute, then the injunction of the Highest Court is that the Lower Court should determine that it is constitutional and let the final court of decision determine where the answer lies. This does not mean, however, that the Lower Courts are not to give voice to their convictions in regard to legislation, but it is a salutary rule which I think I have written down here. It has been written that the age-old rule is that doubts as to constitutionality are to be resolved in favor of upholding the constitutional validity of congressional measures.

So that those are challenges which will be presented. But on the facts which have been presented here for consideration, I see nothing for the Court to do but to grant the petition for preliminary injunction for the reason that the postponement of the decision as to whether or not the Expediter has the right to enjoin

the proposals of the defendants, has a constitutional power to do so, requires that the law must stand until that question is determined. So the motion for preliminary injunction will be granted.

21-R Mr. SIMMS. Thank you, Your Honor.

The COURT. Will you prepare the order?

Mr. SIMMS. I have the order prepared.

The COURT. Have you seen the order?

Mr. KNIGHT. No, Your Honor.

The COURT. I understand that the defendant has taken until September 1st to file an answer to the complaint.

Mr. KNIGHT. That is correct, Your Honor. It seems to me that the entry should be on the application.

The COURT. I will hear your objection to it.

Mr. KNIGHT. The order reads: "Now therefore, it is ordered, adjudged and decreed that the defendants, The Cloyd W. Miller Company, a corporation, and Cloyd W. Miller, their agents, servants, employees, and all persons in active concert or participation with said defendants be, and they are hereby, enjoined from directly or indirectly soliciting, demanding, accepting or receiving any rent in excess of the maximum rent prescribed by the Controlled Housing Rent Regulation and the Rent Regulation for Controlled Rooms in Rooming Houses and other Establish-

21-S ments, as heretofore or hereafter amended, or in excess of the maximum rent permitted by any other regulation or order heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended or extended or superseded, or from otherwise violating the regulations."

The thing that is to be enjoined here, as I understand it, is the increasing of rent beyond the maximum rent now established.

The COURT. That's correct. It should be, I think, limited to just what you object to that they propose to do. That's sort of an omnibus clause that you have in there which I don't think is justified under the circumstances.

(Discussion had).

The COURT. I think the last part there can be deleted, striking out everything after "superseded". Is that your understanding, Mr. Knight?

Mr. KNIGHT. That's correct, Your Honor.

The COURT. Then put a period after "superseded" and the language "or from otherwise violating the regulations" and so on, those last three lines and a fraction go out.

21-T Mr. KNIGHT. That's all right, Your honor.

The COURT. It is my understanding from the statement of counsel that there is no present intention of doing anything further in the matter until this question is decided.

Mr. KNIGHT. Not at all, Your Honor.

The COURT. It isn't necessary for counsel to approve the order as long as it is done here in open Court. Anything further in the matter?

Mr. SIMMS. That's all, Your Honor.

The COURT. You are going to file your answer by September 1st?

Mr. KNIGHT: If it's possible.

The COURT. What about your briefs? Do you want to file briefs? I don't suppose you can until the answer is in?

Mr. SIMMS. Not very well.

Mr. KNIGHT. I would like to have all the time I can reasonably have to prepare a brief.

(Discussion had.)

The COURT. Could you file your brief by the first of October? Would that be adequate?

Mr. KNIGHT. I think so.

21–U The COURT. If you want more time you can ask for it.

Mr. KNIGHT. Very well.

The COURT. Then you can file yours within a short time after that?

Mr. SIMMS. Yes, Your Honor.

The COURT. The answer, of course, will go to the merits of the bill of complaint.

Mr. KNIGHT. That's right.

The COURT. Very well.

[Reporter's certificate to foregoing transcript omitted in printing.]

22 In United States District Court

[Title omitted.]

[File endorsement omitted.]

Finding of facts and conclusions of law

Filed Dec. 1, 1947

Defendants are the owners and manager, respectively, of an apartment building situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and in July 1947, they notified the tenants that their respective rents would be increased on August 1, 1947, to an amount in excess of the maximum rents that had been fixed therefor.

This action was filed by the Expediter to restrain such increase of rents.

The operation of the apartment building is carried on entirely within the State of Ohio and both the building itself and its

management are entirely intra-state. The maximum rentals were fixed at the rentals in effect on July 1, 1941, and there has been no increase or decrease in the rentals charged since that date, and they were in effect on June 30, 1947. The apartment building had for years prior thereto been fully occupied by tenants.

The cost of operation, of supplies, of repairs and replacements had substantially increased since July 1, 1941, and since the date that the maximum rentals were fixed; and the suites are now readily rentable but for the Act, at substantially higher but reasonable rentals.

Actual hostilities of the war ceased prior to December 31, 1946, and on that date the President proclaimed the termination of hostilities.

There is no factual issue and the allegations of fact in the complaint and in the answer are taken as true. The stipulation dated July 21, 1947, used at the hearing for preliminary injunction, stipulates that there is no waiver of defendants' right to
23 contest the constitutionality of the Housing and Rent Act of 1947.

Reference is made to the opinion of the Court dated November 20, 1947.

Conclusions of law

The Court finds as a matter of law, as more particularly appears in the opinion dated November 20, 1947, that the Housing and Rent Act of 1947 is new legislation, is in no way tied up with any war powers of Congress and has no constitutional basis for its validity; that no clause of the federal constitution gives Congress the power to regulate local rents in peacetime and that the technical condition of war since the President's proclamation of the termination of hostilities does not confer this power upon Congress.

That Congress did not rely upon its war powers in enacting the law but fixed its termination without regard to official termination of the war.

That the Act is unconstitutional as exceeding the power of Congress and also in that it contains an unlawful delegation of powers to the Expediter and in that its effect is the taking of private property contrary to the provisions of the Constitution.

Reference is made to the Court's opinion dated November 20, 1947.

(S) PAUL JONES, *Judge.*

Copy of redrafted findings acknowledged December 1, 1947.

(S) PAUL MARSHALL,
Attorney for Plaintiff.

24 In the District Court of the United States for the Northern District of Ohio, Eastern Division

[File endorsement omitted.]

Civil No. 25073

FRANK R. CREEDON, HOUSING EXPEDITER, PLAINTIFF

vs.

THE CLOYD W. MILLER COMPANY, A CORPORATION, CLOYD W. MILLER, DEFENDANTS

Opinion

Filed Nov. 20, 1947

JONES, J.:

In this action the Housing and Rent Act of 1947 has been challenged as unconstitutional because it undertakes to fix and regulate local rentals and interferes with local affairs and rights not subject to congressional power. The defendants, against whom a permanent injunction is sought, announced to their tenants that on August 1, 1947, the rentals in suites of the defendants' apartment in the City of Cleveland, Ohio, would be increased by percentages or sums and methods contrary to the express provisions of the Housing Act of 1947 and regulations authorized thereunder.

A preliminary injunction was granted on July 21, 1947, without contest and without a hearing on the questions now raised by the answer of the defendants, posing the constitutional question. The matter, therefore, is before me for final determination on the pleadings, there being no factual controversy. See stipulation dated July 21, 1947.

The Housing and Rent Act of 1947 consists of two titles: Title 1 deals with amendments concerning housing loans, priorities, etc.; Title 2 sets forth the policy of and authority for the control of rents and evictions by the Housing Expediter.

In Section 201 of Title 2, Congress reaffirms the declaration in the Price Control Extension Act of 1946 concerning the undesirability of unduly prolonged controls in peace time. However, "Congress recognizes that an emergency exists" and that further controls are desirable.

Under Sections 201 and 202 of Title 2, it is not possible for the Housing Expediter to extend rent control to any area which had not been designated a "defense rent area" prior to March 1, 1947, and in which rents were not regulated under the Emergency Price Control Act on March 1, 1947.

25 Section 203 (a) provides:

"After the effective date of this title, no maximum rents shall be established or maintained under the authority of the Emergency Price Control Act of 1942, as amended, with respect to any housing accommodations."

Under Section 204 (c) the Housing Expediter is authorized and directed to remove any or all maximum rents before this Title ceases to be in effect if, in his judgment, the need for such controls no longer exists. The remainder of Title 2 consists of enforcement and eviction provisions.

Section 206 (b) authorizes the Housing Expediter to apply for an injunction whenever in his judgment any person has engaged or is about to engage in an act in violation of subsection (a) of Section 206 which prohibits the demand or receipt of rent in excess of the preseribed maximum rent.

The power of Congress to enact legislative measures is not lightly to be questioned. Only if some substantial constitutional right of the citizen has been infringed or impaired should the courts strike down an act of the Congress. What the court thinks about the law is of no consequence if the congressional measure does not infringe the constitutional rights of the defendants.

It is contended that the continuance of rent regulation stems from the war powers earlier exercised by the Congress and that there has not yet been any official termination of the war; but the President's proclamation of the termination of hostilities was issued on December 31, 1946, and although this may not have been an official termination of the war, nevertheless it inaugurated peace-in-fact.

In the absence of any words or provisions to that effect in the new rent control Act there is no basis for a conclusion that the Congress was intending to act under its war powers. The Act is not by any express words or implied provisions tied up with any war powers of the Congress. It gives, as one might say, the kiss of death to rent regulations but hangs on for a few months with an impotent embrace. The Act speaks of the existence of an emergency without any statement of what the emergency is. If Congress was intending to continue the exercise of war powers residing within its constitutional prerogative, there are no words, and no fair implication may be found in the provisions of the Act, to support such intention. The Act of 1946 and earlier Acts
26 were allowed to lapse. They were not amended or extended.

Section 203 provides that the authority to fix maximum rents under the Emergency Price Control Act of 1942 was to be terminated on the effective date of the 1947 Rent Act. This is new legislation with no plausible constitutional basis for its valid-

ity. It has been stated that courts will take judicial notice of the fact that the war officially has not been terminated; but under the guise of an artificial judicial notice of an existing emergency not named, courts should not indulge in the deception of a fiction not supported by facts.

In recent years that have gone many thoughtful people have questioned the constitutional right of Congress to authorize local rent control. The Great Emergency of the war rather influenced patriotic people to submit to such regulation although believing that it was, even in war time, beyond the reach of federal congressional or executive power. From the earliest times high legal authorities have held that the existence of a state of war did not nullify the provisions of the Constitution. How now can it be asserted that there is a single clause in the Federal Constitution, plausibly interpreted, that gives the government the right to regulate local rents in peacetime?

It has been confidently asserted that in peacetime there should be no emergency that the intelligent application of sound economic principles could not overcome within the framework of constitutional government. There is nothing in this law that stems from constitutional origin or power. The emergency created by housing shortage came into existence long before the war. It was not wholly due to war conditions and property required by the government for low-cost housing with low rentals during the war was condemned and compensation paid the owner. What, in effect, the Act of 1947 does is to provide low rentals for certain groups without taking the property or compensating the owner in any way. To impose federal restrictions upon the free use of the defendants' property is as effective a taking as to condemn it.

That the Congress was not relying upon war powers is evident from the fact, among others, that it provided for a termination of the Housing and Rent Act of 1947 without regard to the official termination of the war and also provided even that the Housing Expediter be "authorized and directed to remove any or all maximum rents before this title ceases to be in effect" if, in his judgment, the need for such controls no longer exists (Section 204 (c)).

Thus it is left to the judgment of the Expediter,
27 throughout the nation to determine when the emergency is over in respective localities. The Act in this respect lacks in uniformity of application and distinctly constitutes a delegation of legislative power not within the grant of Congress. Even the policy of Congress, as expressed in the words of Section 201 of the Act, is inconsistent with an intention to continue control and regulation until the official end of the war.

The right to control local affairs reserved to the states by the Constitution has been pretty much emasculated by the extension of

Federal power. Certainly if the rights of the defendants, as guaranteed by the Constitution, are to be restored, such control and regulation must be terminated. If local rent control and regulation are to be continued until what are asserted to be the evil effects of the war shall have passed away, there is no hope of an early restoration of the constitutional rights of these defendants.

Doubts which earlier I entertained of the constitutional validity of the Housing and Rent Act of 1947, by examination and study, have been crystallized into a conviction that it has no constitutional support in any provision of that instrument.

While it is true that the Act is to expire in a few months there is all the more reason for a speedy decision by the court and before the question becomes moot and of no benefit to those whose rights are at stake.

My considered judgment now is that the Act is without constitutional validity and that the plaintiff is not entitled to the relief demanded.

Accordingly, the preliminary injunction heretofore granted will be dissolved and the complaint dismissed.

(S) JONES,
United States District Judge.

NOVEMBER 20th, 1947.

28 In the District Court of the United States for the Northern District of Ohio, Eastern Division

[File endorsement omitted.]

Civil No. 25073

FRANK R. CREEDON, EXPEDITER, PLAINTIFF

vs.

THE CLOYD W. MILLER COMPANY, A CORPORATION, CLOYD W. MILLER, DEFENDANTS

Settlement and approval as to form of the judgment

Filed Dec. 1, 1947

The Court having on November 21, 1947, finally determined the issues in this cause upon the pleadings, there being no factual dispute, and having found that there is no constitutional basis for the Housing and Rent Act of 1947 and that it is unconstitutional, and this being determinative of the issues in the cause, and that for this reason the preliminary restraining order heretofore granted on July 21, 1947, will be dissolved, and the complaint will be dismissed.

Now, therefore, it is considered, adjudged and decreed that the Housing and Rent Act of 1947 is unconstitutional; that the temporary restraining order heretofore issued on July 21, 1947, be and it is hereby dissolved and that the complaint of the plaintiff be and it is hereby dismissed at the costs of the plaintiff, for which judgment is rendered, and it is ordered that judgment be entered in accordance herewith.

(S) PAUL JONES, *Judge.*

ACKNOWLEDGMENT OF SERVICE

Plaintiff hereby acknowledges service of a copy of the attached Settlement and Approval as to Form of the Judgment this 28th day of November 1947.

(S) PAUL MARSHALL,
Attorney for Plaintiff.

29 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Order substituting party plaintiff

Filed Dec. 1, 1947

The application of Tighe E. Woods, Acting Housing Expediter to be substituted as plaintiff herein having come on for hearing this 1st day of December 1947, and it appearing to the Court that said applicant is the duly appointed and qualified Acting Housing Expediter; that Frank R. Creedon, the plaintiff herein, ceased to hold the office of Housing Expediter, Office of the Housing Expediter, on October 31, 1947; that there is substantial need for continuing and maintaining this action; and that defendant has been given due notice of this application;

Now, therefore, it is hereby ordered that said applicant in his capacity as Acting Housing Expediter, Office of the Housing Expediter, be and is hereby substituted as party plaintiff herein in the place and stead of Frank R. Creedon, Housing Expediter, Office of the Housing Expediter.

(S) PAUL JONES,
Judge of the United States District Court.

Dated this 1st day of December 1947.

30 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Order staying execution of judgment

Filed Dec. 8, 1947

This cause came on for hearing on plaintiff's motion for a stay of execution of the judgment entered by the court on December 1, 1947, dissolving a preliminary injunction theretofore entered by the court and dismissing plaintiff's complaint.

In consideration whereof the court finds that there is probable ground for believing the allegations set forth in plaintiff's motion, and that unless the execution of said ju ment is stayed pending plaintiff's appeal to the Supreme Court, there will be continued and widespread violations of the Housing and Rent Act of 1947 and the r nt regulations issued pursuant thereto, by others than the defendants and by reason thereof the court finds that plaintiff's motion is well-founded and should be and is hereby granted.

Now therefore it is ordered, in accordance with the provisions of Rule 62 (a) of the Rules of Civil Procedure that the execution of the judgment of the court entered on December 1, 1947 dissolving a preliminary injunction theretofore entered by the court and dismissing plaintiff's complaint be and is hereby stayed until plaintiff's appeal from said judgment is docketed in the Supreme Court of the United States, but not to exceed thirty days from the date of this entry.

(S) JONES,
Judge, United States District Court.

Entered: December 8th, 1947.

31 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Petition for appeal

Filed Dec. 17, 1947

Tighe E. Woods, Acting Housing Expediter of the Office of the Housing Expediter, an agency of the Government of the United States of America created by law, plaintiff herein, considering himself aggrieved by the final judgment of this Court entered on December 1, 1947, does hereby pray an appeal from

said final judgment to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the judgment erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that this appeal may be allowed and that citation be issued as provided by law, and that a transcript of the
32 record, proceedings, and documents upon which said final judgment was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

Filed at Cleveland, Ohio, this 17th day of December 1947.

(S.) Paul Marshall,
PAUL MARSHALL,
Attorney for Plaintiff.

51 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Assignment of errors

Filed Dec. 17, 1947

Tighe E. Woods, as Acting Housing Expediter, Office of the Housing Expediter, plaintiff in the above-entitled cause, in connection with his petition for appeal to the Supreme Court of the United States, hereby assigns error to the final judgment of said District Court entered on December 1, 1947, in the above-entitled cause, and says that in the entry of the final judgment the District Court committed error to the prejudice of the plaintiff, in the following particulars:

1. The Court erred in dismissing the complaint herein on the ground that Title II of the Housing and Rent Act of 1947 was invalid.

2. The Court erred in dismissing the complaint herein on the ground that Title II of the Housing and Rent Act of 1947 was invalid in that,

(a) Upon the termination of hostilities, Congress could no longer exercise its war powers to control rents;

52 (b) The Act made an unconstitutional delegation of power to the Housing Expediter in that it authorizes him to

remove controls in any defense rental area if in his judgment the need for continuing maximum rents no longer exists.

Wherefore, Plaintiff prays that the final judgment of the District Court dismissing the complaint may be reversed and the cause remanded for the entry of a decree enjoining the defendants from violating the Housing and Rent Act of 1947.

Dated this 17th day of December 1947.

(S) Paul Marshall,
PAUL MARSHALL,
Attorney for Plaintiff.

53 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Order allowing appeal

Filed December 17, 1947

This cause having come on this day before the Court on petition of Tighe E. Woods, Acting Housing Expediter of the Office of the Housing Expediter, praying for the allowance of an appeal to the Supreme Court of the United States for a reversal of the judgment of dismissal of the plaintiff's complaint in the above-entitled action, and requesting that a duly authenticated copy of the record of this cause be transmitted to the Clerk of the Supreme Court of the United States; the Court having heard and considered said petition together with petitioner's assignment of errors and statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause, the same having been duly filed with the Clerk of this Court.

It is ordered and adjudged that Tighe E. Woods, as Acting Housing Expediter of the Office of the Housing Expediter, be and he hereby is allowed to appeal to the Supreme Court of the United States from the judgment of this Court dismissing the complaint in this action, that a duly authenticated copy of the record in this case be transmitted to the Clerk of the Court, and that a citation be issued as provided by law.

54 It is further ordered that Tighe E. Woods, Acting Housing Expediter of the Office of the Housing Expediter, be and he is hereby allowed a period of sixty days from the date hereof within which to appeal and docket said appeal in the Supreme Court of the United States.

Dated at Cleveland, Ohio, this 17th day of December 1947.

(S) Paul Jones,
RAUL JONES,
United States District Judge.

55 [Citation in usual form omitted in printing.]

57 In United States District Court

[Title omitted.]
[File endorsement omitted.]

Praecipe for transcript of record

Filed Dec. 17, 1947

To the Clerk, United States District Court, Northern District of Ohio, Eastern Division:

The appellant hereby requests that, in preparing the transcript of the record in the above-entitled cause for his appeal to the Supreme Court of the United States, you include the following:

1. All docket entries showing filing of the pleadings and papers hereinafter set forth, and the entry of the orders hereinafter specified.
2. Complaint.
3. Motion for preliminary injunction.
4. Stipulation of facts.
5. Order of July 21, 1947, granting a preliminary injunction.
6. Answer of the defendants.
7. Transcript of hearing on July 21, 1947.
8. Findings of fact and conclusions of law entered by Honorable Paul Jones, District Judge.
9. Opinion of Honorable Paul Jones, District Judge, filed November 20, 1947.
10. Judgment entered on December 1, 1947, dissolving the preliminary injunction and dismissing the complaint.

58 11. Order of December 1, 1947, substituting Tighe E. Woods, Acting Housing Expediter, as plaintiff.

12. Stay order pending appeal.
13. Petition for appeal.
14. Statement of jurisdiction.
15. Assignment of errors.
16. Order allowing appeal.
17. Citation.
18. Statement calling attention to the provisions of Rule 12, Paragraph 3, Rules of the Supreme Court of the United States.
19. Praecipe for transcript of record.
20. Defendant's agreement as to the jurisdiction of the Supreme Court of the United States.
21. Proof of service of:

(a) Petition for appeal.

(b) Order allowing appeal.
(c) Assignment of errors.
(d) Statement as to jurisdiction.
(e) Citation.
(f) Statement calling attention to the provisions of Supreme Court Rule 12 (3).
(g) Praecipe for Transcript of Record Filed at Cleveland, Ohio, this 17th day of December, 1947.

(S) Paul Marshall,
PAUL MARSHALL,
Attorney for plaintiff.

59 [Clerk's certificate to foregoing transcript omitted in printing.]

60 IN THE SUPREME COURT OF THE UNITED STATES

Statement of points to be relied upon and designation of parts of the record necessary for consideration thereof

(Filed Dec. 26, 1947)

1. Now comes the Appellant in the above cause and for its statement of points upon which it intends to rely in its appeal to this Court adopts the points contained in its Assignment of Errors heretofore filed herein.

2. Appellant deems necessary for consideration of the foregoing points, and hereby designates for printing, the entire record in this cause, as filed in this Court pursuant to Appellant's praecipe.

Philip B. Perlman
PHILIP B. PERLMAN,
Solicitor General.

DECEMBER 1947.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing motion on Paul S. Knight, Esq., 806 Williamson Building, Cleveland, Ohio, Attorney for appellees, The Cloyd W. Miller Company, a corporation, and Cloyd W. Miller, by mailing a copy to him at his business address.

Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

[File endorsement omitted.]

[Endorsement on cover:] File No. 52716. D. C. U. S., Northern Ohio. Term No. 486. Tighe E. Woods, Acting Housing Expediter, Office of the Housing Expediter, appellant, *vs.* The Cloyd W. Miller Company, a corporation, and Cloyd W. Miller. Filed December 22, 1947. Term No. 486 O. T. 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1948

FILE COPY

No. 486

In the Supreme Court of the United States

OCTOBER TERM, 1947

TIGHE E. WOODS, ACTING HOUSING EXPEDITER OF THE OFFICE OF HOUSING EXPEDITER, APPELLANT

v.

THE CLOYD W. MILLER COMPANY, A CORPORATION, AND CLOYD W. MILLER

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Northern District of Ohio, Eastern Division

CIVIL No. 25073

TIGHE E. WOODS, ACTING HOUSING EXPEDITER OF THE OFFICE OF HOUSING EXPEDITER, APPELLANT

v.

THE CLOYD W. MILLER COMPANY, A CORPORATION, AND CLOYD W. MILLER

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the plaintiff herein submits his statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the decision of the District Court entered in this cause December 1, 1947. A petition for appeal is presented to the District Court herewith, to wit, on December —, 1947.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this case is conferred by Section 2 of the Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. 349 (a).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

Bowles v. *Willingham,* 321 U. S. 503.
U. S. 533.
Bowles v. *Willingham,* 321 U. S. 503.

STATUTE AND REGULATION INVOLVED

1. The pertinent portions of the Housing and Rent Act of 1947, Pub. L. 129, 80th Cong., 1st sess., and of the Controlled Housing Rent Regulation 12 F. R. 4331, are set out verbatim in Appendix A to this statement.

The Housing and Rent Act of 1947 was enacted on June 30, 1947, and became effective July 1, 1947. Title II of the Act (the only part involved in this case) provided for the maintenance of rent control in those areas which were under control pursuant to the Emergency Price Control Act on March 1, 1947 (Section 202 (d)). The Act fixed maximum rents in such areas as those in effect under the Emergency Price Control Act on June 30, 1947, and forbade the demand for or receipt of rents in excess thereof (Section 204 (b)). The Housing Expediter is authorized to make adjustments in maximum rents and, in addition, rent increases of up to 15% by written lease between the landlord and tenant were authorized (Section 204 (b)). The Housing Expediter is authorized to remove controls in any defense rental area if the need for such controls no longer exists due to sufficient construction of

new housing accommodations or when the demand for rental housing accommodations has otherwise reasonably been met (Section 204 (c)).

The Controlled Housing Rent Regulation, issued pursuant to the Act and effective July 1, 1947, similarly fixes the maximum rent for housing accommodations under its control as that in effect on June 30, 1947 (Section 4 (a)), and provides that no person shall demand or receive rent in excess thereof (Section 2 (a)).

THE ISSUES AND RULING BELOW

The complaint in this action was filed in the United States District Court for the Northern District of Ohio on July 10, 1947, and alleged that the defendants were the landlords of certain housing accommodations within the Cleveland Defense Rental Area, subject to the Housing and Rent Act and the Controlled Housing Rent Regulation.[1] It further alleged that the defendants had demanded from the tenants rent in excess of the legal maximum rents. It prayed for a preliminary and final injunction restraining the defendants from demanding or receiving more than the maximum rents.

By a stipulation of facts, the parties agreed that the defendants were the landlords of housing

[1] Section 1 (a) of the Regulation provides that the areas listed in Schedule A of the Regulation are subject thereto. Cleveland, Ohio, is listed in Schedule A, which notes that it was placed under rent control in 1942.

accommodations within the Cleveland Defense Rental Area, and that they had demanded over-ceiling rents from all of their tenants. On July 21, 1947, the District Court, finding that the facts were as stated above and that the defendants had violated the Housing and Rent Act of 1947, granted a preliminary injunction restraining the defendants from demanding or receiving any rent in excess of the maximum rent allowed. On August 27, 1947, defendants filed an answer which admitted the factual allegations in the complaint and raised as a defense that the Housing and Rent Act of 1947 was unconstitutional.

On November 20, 1947, the District Court issued its opinion [2] on the merits of the action holding that Title II of the Housing and Rent Act of 1947 was unconstitutional because:

1. With the termination of hostilities as proclaimed by the President on December 31, 1946, Congress could no longer exercise its war powers to control rents.

2. The Act made an unconstitutional delegation of power to the Housing Expediter in that it authorizes him to remove controls in any defense rental area if, in his judgment, the need for continuing maximum rents no longer exists.

On December 1, 1947, judgment was entered dissolving the preliminary injunction and dismissing the complaint.

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[2] The opinion of the District Court is set out in Appendix B to this statement.

THE QUESTIONS ARE SUBSTANTIAL

1. The Federal regulation of rents for housing accommodations commenced under the Emergency Price Control Act of 1942, as amended, as an exercise of the war powers of Congress. *Bowles* v. *Willingham*, 321 U. S. 503; *Taylor* v. *Brown*, 137 F. 2d 654 (E. C. A.) certiorari denied 320 U. S. 787. On December 31, 1946, the President proclaimed the termination of hostilities (12 F. R. 1). The United States has not yet entered into peace treaties with either Germany or Japan, and neither the President nor Congress has acted to end the state of war with those countries.[3] The District Court's decision that the Housing and Rent Act of 1947 is unconstitutional in that upon the termination of hostilities Congress no longer possesses the power to control rents, is in direct conflict with decisions of other district courts. In *Creedon* v. *Stratton*, D. Neb., No. 187, decided October 6, 1947, and in *Granberry* v. *Creedon*, D. Colo., No. 2266, decided September 11, 1947, the contention was rejected that the war emergency

[3] On July 25, 1947, the President approved S. J. Res. 123 which terminated certain war statutes. At that time, the President issued a statement in which he declared that "The emergencies declared by the President on September 8, 1939, and May 27, 1941, and the state of war continue to exist, however, and it is not possible at this time to provide for terminating all war and emergency powers."

had terminated and that therefore the Act was unconstitutional.[4]

The decision below likewise conflicts with decisions of the Supreme Court which hold that the war power does not end with the cessation of hostilities, but includes the power to remedy the evils which have arisen from it. This doctrine was aptly stated at the last term in *Fleming* v. *Mohawk Wrecking and Lumber Co.*, 331 U. S. 111. In that case, which involved the Emergency Price Control Act, the Court declared (p. 116):

> On December 31, 1946, after the creation of the Office of Temporary Controls, the President, while recognizing that "a state of war still exists," by proclamation declared that hostilities had terminated (Proclamation 2714, 50 U. S. C. A. Appendix, § 601 note, 12 Fed. Reg. 1). The cessation of hostilities does not necessarily end the war power. It was stated in *Hamilton* v. *Kentucky Distilleries & W. Co.*, 251 U. S. 146, 161, 40 S. Ct. 106, 110, 64 L. Ed. 194, that the war power includes the power "to remedy the evils which have arisen from its rise and progress" and continues during that emergency. *Stewart* v. *Kahn*, 11 Wall. 493, 507, 20 L. Ed. 176.

Steward v. *Kahn* and the *Kentucky Distilleries* case, cited in the above quotation, and *Ruppert* v. *Caffey*, 251 U. S. 264 are also closely in point.

[4] In *Lewis* v. *Anderson*, 72 F. S. 119 (S. D. Cal.), decided June 9, 1947, Judge Yankwich sustained the constitutionality of the Sugar Control Extension Act of 1947 as an exercise of the war emergency powers.

2. The District Court also concluded that Congress, in enacting the Housing and Rent Act of 1947, had not even purported to act under the war power because "The Act is not by any express words or implied provisions tied up with any war powers of the Congress." But there is no requirement that Congress specify under which of its constitutional powers it is acting when it legislates. Most of the statutes enacted by Congress contain no declaration of policy, much less a statement of the constitutional powers under which they are enacted.[5] In the instant case, the issue is whether the statute can be sustained under the war powers, not whether Congress recited that it was acting under that power. In any event, Congress clearly indicated that it regarded Title II of the Housing and Rent Act of 1947 as an exercise of the war power. See Section 201 of the Act; Cong. Rec. May 1st, 1947, p. 4520; H. R. 317, 80 Cong. Rec., 1st sess., p. 2. That a serious housing shortage exists as a result of the war is too well known to require demonstration at this time.

3. The District Court held that the Housing and Rent Act of 1947 was further invalid in that it "lacks in uniformity of application and distinctly constitutes a delegation of legislative power not within the grant of Congress." The District

[5] For example, of the first 100 statutes enacted by the 2d session of the 79th Congress, 90 contain no statement of policy whatsoever.

Court based this conclusion upon the provision of Section 204 (c) of the Act that "the Housing Expediter is hereby authorized and directed to remove any and all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met". We think it clear, however, that this section contains an adequate standard for administrative action. See *Bowles* v. *Willingham*, 321 U. S. 503; *Yakus* v. *United States*, 321 U. S. 414; *Opp Cotton Mills* v. *Administrator*, 312 U. S. 126, 145–146, and cases cited; *Fahey* v. *Mallonee*, 332 U. S. 245.

4. The issue is an extremely important one. Some 16,000,000 housing accommodations are presently under rent control, and the tenants will be left without protection, both with regard to the rent they would have to pay and with regard to eviction from their dwellings, if the present decision should stand. Moreover, grave doubt would be cast upon the validity of any price-control or rationing statutes which Congress might enact to cope with the continuing war-born inflation.

Respectfully submitted.

(S) Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

In the District Court of the United States for the Northern District of Ohio Eastern Division

Civil Action, File No. 25073

TIGHE E. WOODS, ACTING HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, PLAINTIFF

v.

THE CLOYD W. MILLER COMPANY, A CORPORATION, CLOYD W. MILLER, DEFENDANTS

DEFENDANTS' AGREEMENT OF JURISDICTION OF THE SUPREME COURT ON APPEAL

Filed Dec. 17, 1947, 3:06 P. M. C. B. Watkins, Clerk. U. S. District Court NDO.

Defendants through counsel hereby agree that the Supreme Court of the United States has jurisdiction of the appeal of this case under Title 28 U. S. C. A. Section 349 (a) (Section 2 of the Act of August 24, 1937), because the District Court has held Title II of the Housing and Rent Act of 1947 unconstitutional.

(S) Paul S. Knight,
PAUL S. KNIGHT,
Attorney for Defendants.

APPENDIX

TITLE II—MAXIMUM RENTS

DECLARATION OF POLICY

SEC. 201. (a) The Congress hereby reaffirms the declaration in the Price Control Extension Act of 1946 that unnecessary or unduly prolonged controls over rents would be inconsistent with the return to a peacetime economy and would tend to prevent the attainment of the goals therein declared.

(b) The Congress therefore declares that it is its purpose to terminate at the earliest practicable date all Federal restrictions on rents on housing accommodations. At the same time the Congress recognizes that an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period, as well as the attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in defense-rental areas. Such restrictions should be administered with a view to prompt adjustments where owners of rental housing accommodations are suffering hardships because of the inadequacies of the maximum rents applicable to their housing accommodations, and under procedures designed to minimize delay in the granting of

necessary adjustments, which, so far as practicable, shall be made by local boards with a minimum of control by any central agency.

(c) To the end that these policies may be effectively carried out with the least possible impact on the economy pending complete decontrol, the provisions of this title are enacted.

DEFINITIONS

SEC. 202. As used in this title—

(a) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or a legal successor or representative of any of the foregoing.

(b) The term "housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes (including houses, apartments, rooming- or boarding-house accommodations, and other properties used for living or dwelling purposes) together with all privileges, services, furnishings, furniture, and facilities connected with the use or occupancy of such property.

(c) The term "controlled housing accommodations" means housing accommodations in any defense-rental area, except that it does not include—

(1) those housing accommodations, in any establishment which is commonly known as a hotel in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and

secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; or

(2) any motor court, or any part thereof; or any tourist home serving transient guests exclusively, or any part thereof; or

(3) any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect, or (B) which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations.

(d) The term "defense-rental area" means any part of any area designated under the provisions of the Emergency Price Control Act of 1942, as amended, prior to March 1, 1947, as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of such Act, in which maximum rents were being regulated under such Act on March 1, 1947.

(e) The term "rent" means the consideration demanded or received in connection with the use or occupancy or the transfer of a lease of any housing accommodations.

TERMINATION OF RENT CONTROL UNDER EMERGENCY PRICE CONTROL ACT OF 1942.

SEC. 203. (a) After the effective date of this title, no maximum rents shall be established or maintained under the authority of the Emergency Price Control Act of 1942, as amended, with respect to any housing accommodations.

(b) On the termination of rent control under this title all records and other data used or held in connection with the establishment and maintenance of maximum rents by the Housing Expediter, and all predecessor agencies, shall, on request, be delivered without reimbursement to the proper officials of any State or local subdivision of government that may be charged with the duty of administering a rent-control program in any State or local subdivision of government to which such records and data may be applicable: *Provided, however,* That any such records or data shall be so made available subject to recall for use in carrying out the purposes of this title.

RENT CONTROL UNDER THIS TITLE

SEC. 204. (a) The Housing Expediter shall administer the powers, functions, and duties under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until February 29, 1948.

(b) During the period beginning on the effective date of this title and ending on the date this

title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order make such adjustments in such maximum rents as may be necessary to correct inequities or further to carry out the purposes and provisions of this title: *And provided further,* That in any case in which a landlord and tenant, on or before December 31, 1947, voluntarily enter into a valid written lease in good faith with respect to any housing accommodations for which a maximum rent is in effect under this section and such lease takes effect after the effective date of this title and expires on or after December 31, 1948, and if a true and duly executed copy of such lease is filed, within fifteen days after the date of execution of such lease, with the Housing Expediter, the maximum rent for such housing accommodations shall be, as of the date such lease takes effect, that which is mutually agreed between the landlord and tenant in such lease if it does not represent an increase of more than 15 per centum over the maximum rent which would otherwise apply under this section. In any case in which a maximum rent for any housing accommodations is established pursuant to the provisions of the last proviso above, such maximum rent shall not thereafter be subject to modification by any regulation or order issued under the provisions of this title. No housing accommodations

for which a maximum rent is established pursuant to the provisions of the last proviso above shall be subject, after December 31, 1947, to any maximum rent established or maintained under the provisions of this title.

(c) The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-renfal area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met.

(d) The Housing Expediter is authorized to issue such regulations and orders, consistent with the provisions of this title, as he may deem necessary to carry out the provisions of this section and section 202 (c).

(e) (1) The Housing Expediter is authorized and directed to create in each defense-rental area, or such portion thereof as he may designate, a local advisory board, each such board to consist of not less than five members who are representative citizens of the area, to be appointed by the Housing Expediter, from recommendations made by the respective Governors. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the board shall make recommendations to the officials administering this title within its area. The local boards may make such recommendations to the Housing Expediter as they deem advisable with respect to the following matters:

(A) Decontrol of the defense-rental area or any portion thereof;

(B) The adequacy of the general rent level in the area; and

(C) Operations generally of the local rent office, with particular reference to hardship cases.

(2) The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

(3) Within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropri te action shall promptly be taken to carry such recommendation into effect.

(4) Immediately upon the enactment of this Act the Housing Expediter shall communicate with the governors of the several States advising them of the provisions of this subsection and of the number and location of defense-rental areas in their respective States, and requesting their cooperation in carryi g out such provisions.

(f) The provisions of this title shall cease to be in effect on February 29, 1948.

RECOVERY OF DAMAGES BY TENANTS

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment, for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided,* That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be

a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same plaintiff prior to the institution of the action in which such judgment was rendered.

PROHIBITION AND ENFORCEMENT

SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

MAINTENANCE OF ACTIONS FOR CERTAIN ALLEGED PAST VIOLATIONS

SEC. 207. No action or proceeding, involving any alleged violation of Maximum Price Regulation Numbered 188, issued under the Emergency Price Control Act of 1942, as amended, shall be maintained in any court, or judgment thereon executed or otherwise proceeded on, if a court of competent jurisdiction has found, or by opinion

has declared, that the person alleged to have committed such violation acted in good faith and that application to such person of the "actual delivery" provisions of such regulation would result or has resulted in extreme hardship.

PROPERTY, PERSONNEL, AND APPROPRIATIONS

SEC. 208. (a) The records, property, personnel, and funds, relating primarily to rent control, transferred to the Housing Expediter by or pursuant to Executive Order Numbered 9841, dated April 23, 1947, may be used for the purpose of carrying out the powers, functions, and duties of the Housing Expediter under this title; except that any personnel so transferred who are found to be in excess of the needs of the Housing Expediter for the exercise of such powers, functions, and duties shall be separated from the service.

(b) There are authorized to be appropriated to the Housing Expediter such sums as may be necessary to carry out the provisions of this Act.

EVICTION OF TENANTS

SEC. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless—

(1) under the law of the State in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than

an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;

(2) the landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations;

(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;

(4) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of substantially altering, remodeling, or demolishing them and replacing them with new construction, and the altering or remodeling is reasonably necessary to protect and conserve the housing accommodations and cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by Federal, State, or local law for the alterations, remodeling, or any construction planned; or

(5) the housing accommodations are nonhousekeeping, furnished housing accommodations, located within a single dwelling unit not used as a rooming or boarding house and the remaining portion of which is occupied by the landlord or his immediate family.

(b) Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided,* That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities, exceeds the allowable maximum.

ADMINISTRATIVE PROCEDURE ACT INAPPLICABLE

SEC. 210. Section 2 (a) of the Administrative Procedure Act, as amended, is amended by inserting after "Selective Training and Service Act of 1940;" the following: "Housing and Rent Act of 1947;".

APPLICATION

SEC. 211. The provisions of this title shall be applicable to the several States and to the Territories and possessions of the United States but shall not be applicable to the District of Columbia.

EFFECTIVE DATE OF TITLE

SEC. 212. This title shall become effective on the first day of the first calendar month following the month in which this Act is enacted.

SHORT TITLE

SEC. 213. This Act may be cited as the "Housing and Rent Act of 1947".

2. The pertinent portions of the controlled Housing Rent Regulation, 12 F. R. 4331, provide as follows:

> SEC. 2. (a). *General prohibition.*—Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall offer, demand, or receive any rent for or in connection with the use or occupancy on and after the effective date of this regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. A reduction in the minimum space, services, furniture, furnishings, or equipment required under section 3 of this regulation shall constitute an acceptance of rent higher than the maximum rent. Lower rents than those provided by this regulation may be demanded or received.
>
> SEC. 4. (a). *Maximum rents in effect on June 30, 1947.*—The maximum rent for any housing accommodation under this regulation (unless and until changed by the Expediter as provided in section 5) shall be the maximum rent which was in effect on June 30, 1947, as established under the Emergency Price Control Act of 1942, as amended, and the applicable rent regulation issued thereunder, except as otherwise provided in this section.

APPENDIX B

In the District Court of the United States for the Northern District of Ohio, Eastern Division

Civil No. 25073

FRANK R. CREEDON, HOUSING EXPEDITER,
PLAINTIFF

v.

THE CLOYD W. MILLER COMPANY, A CORPORATION, CLOYD W. MILLER, DEFENDANTS

JONES, *J:* In this action the Housing and Rent Act of 1947 has been challenged as unconstitutional because it undertakes to fix and regulate local rentals and interferes with local affairs and rights not subject to congressional power. The defendants, against whom a permanent injunction is sought, announced to their tenants that on August 1, 1947, the rentals in suites of the defendants' apartments in the City of Cleveland, Ohio, would be increased by percentages or sums and methods contrary to the express provision of the Housing Act of 1947 and regulations authorized thereunder.

A preliminary injunction was granted on July 21, 1947, without contest and without a hearing on the questions now raised by the answer of the defendants, posing the constitutional question. The matter, therefore, is before me for final determination on the pleadings there being no fac-

tual controversy. See Stipulation dated July 21, 1947.

The Housing and Rent Act of 1947 consists of two titles: Title 1 deals with amendments concerning housing loans, priorities, etc.; Title 2 sets forth the policy of and authority for the control of rents and evictions by the Housing Expediter.

In Section 201 of Title 2, Congress reaffirms the declaration in the Price Control Extension Act of 1946 concerning the undesirability of unduly prolonged controls in peacetime. However, "Congress recognizes that an emergency exists" and that further controls are desirable.

Under Sections 201 and 202 of Title 2, it is not possible for the Housing Expediter to extend rent control to any area which had not been designated a "defense rent area" prior to March 1, 1947, and in which rents were not regulated under the Emergency Price Control Act of March 1, 1947.

Section 203 (a) provides:

> After the effective date of this title, no maximum rents shall be established or maintained under the authority of the Emergency Price Control Act of 1942, as amended, with respect to any housing accommodations.

Under Section 204 (c) the Housing Expediter is authorized and directed to remove any or all maximum rents before this Title ceases to be in effect if, in his judgment, the need for such controls no longer exists. The remainder of Title 2 consists of enforcement and eviction provisions.

Section 206 (b) authorizes the Housing Ex-

pediter to apply for an injunction whenever in his judgment any person has engaged or is about to engage in an act in violation of sub-section (a) of Section 206 which prohibits the demand or receipt of rent in excess of the prescribed maximum rent.

The power of Congress to enact legislative measures is not lightly to be questioned. Only if some substantial constitutional right of the citizen has been infringed or impaired should the courts strike down an act of the Congress. What the court thinks about the law is of no consequence if the congressional measure does not infringe the constitutional rights of the defendants.

It is contended that the continuance of rent regulation stems from the war powers earlier exercised by the Congress and that there has not yet been any official termination of the war; but the President's proclamation of the termination of hostilities was issued on December 31, 1946, and although this may not have been an official termination of the war, nevertheless it inaugurated peace in fact.

In the absence of any words or provisions to that effect in the new rent control Act there is no basis for a conclusion that the Congress was intending to act under its war powers. The Act is not by any express words or implied provisions tied up with any war powers of the Congress. It gives, as one might say, the kiss of death to rent regulation but hangs on for a few months with an impotent embrace. The Act speaks of the existence of an emergency without any statement of what the emergency is. If Congress was intending to continue the exercise of war powers

residing within its constitutional prerogative, there are no words, and no fair implication may be found in the provisions of the Act, to support such intention. The Act of 1946 and earlier Acts were allowed to lapse. They were not amended or extended. Section 203 provides that the authority to fix maximum rents under the Emergency Price Control Act of 1942 was to be terminated on the effective date of the 1947 Rent Act. This is new legislation with no plausible constitutional basis for its validity. It has been stated that courts will take judicial notice of the fact that the war officially has not been terminated; but under the guise of an artificial judicial notice of an existing emergency not named, courts should not indulge in the deception of a fiction not supported by facts.

In recent years that have gone many thoughtful people have questioned the constitutional right of Congress to authorize local rent control. The great emergency of the war rather influenced patriotic people to submit to such regulation although believing that it was, even in wartime, beyond the reach of federal congressional or executive power. From the earliest times high legal authorities have held that the existence of a state of war did not nullify the provisions of the Constitution. How now can it be asserted that there is a single clause in the Federal Constitution, plausibly interpreted, that gives the government the right to regulate local rents in peacetime?

It has been confidently asserted that in peacetime there should be no emergency that the in-

telligent application of sound economic principles could not overcome within the framework of constitutional government. There is nothing in this law that stems from constitutional origin or power. The emergency created by housing shortage came into existence long before the war. It was not wholly due to war conditions, and property required by the government for low-cost housing with low rentals during the war was condemned and compensation paid the owner. What in effect, the Act of 1947 does is to provide low rentals for certain groups without taking the property or compensating the owner in any way. To impose federal restrictions upon the free use of the defendants' property is as effective a taking as to condemn it.

That the Congress was not relying upon war powers is evident from the fact, among others, that it provided for a termination of the Housing and Rent Act of 1947 without regard to the official termination of the war and also provided even that the Housing Expediter be "authorized and directed to remove any or all maximum rents before this title ceases to be in effect" if, in his judgment, the need for such controls no longer exists (Section 204 (c)). Thus it is left to the judgment of the Expediter, throughout the nation to determine when the emergency is over in respective localities. The Act in this respect lacks in uniformity of application and distinctly constitutes a delegation of legislative power not within the grant of Congress. Even the policy of Congress as expressed in the words of Section 201 of the Act, is inconsistent with an intention to

continue control and regulation until the official end of the war.

The right to control local affairs reserved to the states by the Constitution has been pretty much emasculated by the extension of Federal power. Certainly if the rights of the defendants, as guaranteed by the Constitution, are to be restored, such control and regulation must be terminated. If local rent control and regulation are to be continued until what are asserted to be the evil effects of the war shall have passed away, there is no hope of an early restoration of the constitutional rights of these defendants.

Doubts which earlier I entertained of the constitutional validity of the Housing and Rent Act of 1947, by examination and study have been crystallized into a conviction that it has no constitutional support in any provision of that instrument.

While it is true that the Act is to expire in a few months there is all the more reason for a speedy decision by the court and before the question becomes moot and of no benefit to those whose rights are at stake.

My considered judgment now is that the Act is without constitutional validity and that the plaintiff is not entitled to the relief demanded.

Accordingly, the preliminary injunction heretofore granted will be dissolved and the complaint dismissed.

(S) PAUL JONES,
United States District Judge.

NOVEMBER 20, 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1948

FILE COPY

No. 486

In the Supreme Court of the United States

OCTOBER TERM, 1947

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, APPELLANT

v.

THE CLOYD W. MILLER CO., A CORPORATION AND CLOYD W. MILLER

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

BRIEF FOR THE APPELLANT

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BRIEF FOR THE APPELLANT

OPINION BELOW

The opinion of the District Court (R. 26) has not yet been reported.

JURISDICTION

The judgment of the District Court was entered December 1, 1947 (R. 29–30). The petition for appeal was filed on December 17, 1947 (R. 31) and the appeal was allowed on December 17, 1947 (R. 33). Probable jurisdiction was noted by this Court on January 12, 1948. The jurisdiction of this Court is conferred by Section 2 of the Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. 349a.

QUESTIONS PRESENTED

1. Whether Title II of the Housing and Rent Act of 1947, hereinafter called the Act, is unconstitutional because, with the termination of hostilities as proclaimed by the President on December 31, 1946, Congress could no longer exercise its war powers to control rents.

2. Whether the Act contains an unconstitutional delegation of legislative power because it authorizes and directs the Housing Expediter to remove rent controls in any defense rental area if in his judgment the need for continuing maximum rents in such area no longer exists.

3. Whether the Act violates the due process clause of the Fifth Amendment because it excepts from rent control hotels, motor courts, new housing created since February 1, 1947, and housing which was not rented except to a member of the landlord's family between February 1, 1945 and January 31, 1947.

STATUTE AND REGULATION INVOLVED

The pertinent portions of the Housing and Rent Act of 1947, Pub. L. 129, 80th Cong., 1st Sess., and of the Controlled Housing Rent Regulation (12 F. R. 4331), are set out verbatim in the Appendix, *infra*, pp. 40–53.

The Housing and Rent Act of 1947 was enacted on June 30, 1947, and became effective July 1, 1947. Title II of the Act (the only part involved in this case) provided for the maintenance of rent

controls in those areas which were under control pursuant to the Emergency Price Control Act on March 1, 1947 (Section 202 (d)). The Act fixed maximum rents in such areas as those in effect under the Emergency Price Control Act on June 30, 1947, and forbade the demand for or receipt of rents in excess thereof (Section 204 (b)). The Housing Expediter is authorized to make adjustments in maximum rents and, in addition, rent increases of up to 15% by written lease between the landlord and tenant are authorized. (Section 204 (b)). The Housing Expediter is authorized to remove rent controls in any defense rental area if in his judgment the need for such controls no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has otherwise reasonably been met (Section 204 (c)). Excluded from rent control are hotels, motor courts, tourist houses, new housing created on or after February 1, 1947, and housing not rented, except to members of the family of the occupant, from February 1, 1945 to January 31, 1947 (Section 202 (c)).

The Controlled Housing Rent Regulation, issued pursuant to the Act and effective July 1, 1947, similarly fixes the maximum rents for housing accommodations under its control as those in effect on June 30, 1947 (Section 4 (a)) and provides that no person shall demand or receive rents in excess thereof (Section 2 (a)).

STATEMENT

The complaint in this action was filed in the United States District Court for the Northern District of Ohio on July 11, 1947, and alleged that the defendants (appellees herein) were the landlords of certain housing accommodations within the Cleveland Defense Rental Area, subject to the Housing and Rent Act and the Controlled Housing Rent Regulation.[1] It further alleged that the defendants had demanded from the tenants rent in excess of the legal maximum rents. It prayed for a preliminary and final injunction restraining the defendants from demanding or receiving more than the maximum rents. (R. 3–4.)

By a stipulation of facts, the parties agreed that the defendants were the landlords of housing accommodations within the Cleveland Defense Rental Area, and that they had demanded over-ceiling rents from all of their tenants (R. 10–11, 8–10). On July 21, 1947, the District Court, finding that the facts were as stated above and that the defendants had violated the Housing and Rent Act of 1947, granted a preliminary injunction restraining the defendants from demanding or receiving any rent in excess of the maximum rent

[1] Section 1 (a) of the Regulation provides that the areas listed in Schedule A of the Regulation are subject thereto. Cleveland, Ohio is listed in Schedule A, which notes that it was placed under rent control in 1942.

prescribed by the Act and the Regulation (R. 11–12). On August 28, 1947, defendants filed an answer which admitted the factual allegations in the complaint and raised as a defense that the Housing and Rent Act of 1947 was unconstitutional (R. 13–15).

Briefs were filed on the constitutional issues. On November 20, 1947, the District Court issued its opinion (R. 26) on the merits of the action, holding that Title II of the Housing and Rent Act of 1947 was unconstitutional because:

1. With the termination of hostilities as proclaimed by the President on December 31, 1947, Congress could no longer exercise its war powers to control rents.

2. The Act made an unconstitutional delegation of power to the Housing Expediter in that it authorizes him to remove controls in any defense rental area if in his judgment the need for continuing maximum rents no longer exists.

On December 1, 1947, judgment was entered dissolving the preliminary injunction and dismissing the complaint (R. 29–30).

SUMMARY OF ARGUMENT

I

A. The war powers do not end with the cessation of hostilities. Many cases establish that they include the power to remedy the evils which have arisen from the war, and that they continue

for the duration of the emergency resulting from the war. The present statute was enacted under the war powers of Congress to deal with the emergency housing shortage resulting from the war.

B. The facts brought to the attention of Congress, which may be said to be of common knowledge, prove that the housing shortage resulting from the war is still in existence. This is demonstrated, if proof be needed, by the facts as to the sharp decline in residential construction during the war, vacancy rates and the prevailing rentals for uncontrolled housing. The specific finding of Congress that the emergency still exists is thus clearly a reasonable one which this Court will not disregard.

II

Section 204 (c) of the statute, which empowers the Housing Expediter to remove rent controls in areas in which the need therefor no longer exists because of sufficient construction of new housing or a meeting of the demand for rental housing accommodations, does not contain an invalid delegation of legislative power.

III

The statute exempts from rent control hotels, motor courts, transient tourist homes, newly built or newly converted housing, and housing which has not been rented (except to members of the

immediate family of the occupant) between February 1, 1945, and January 31, 1947. The reason for the exemption for hotels, motor courts and tourist homes was because operating costs for such establishments consist largely of personal services the cost of which has risen substantially. The reason for the other exemptions was to bring new rental units into the market and thereby to alleviate the shortage. This classification is not arbitrary, and therefore does not violate the Fifth Amendment.

ARGUMENT

I

THE HOUSING AND RENT ACT OF 1947 IS A VALID EXERCISE OF THE WAR POWERS OF CONGRESS DESPITE THE EARLIER TERMINATION OF HOSTILITIES

The statute here involved is an exercise of the war powers of Congress. The Act continues the control of rents which was commenced by the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App., Supp. V, 901, *et seq.*), which rested on the war powers, and was maintained by the Price Control Extension Act of 1946 (60 Stat. 664).

At the present time, although fighting has ceased and the President has proclaimed the ter-

mination of hostilities (12 Fed. Reg. 1),[2] the United States has not yet entered into peace treaties with either Germany or Japan, and neither the President nor Congress has acted to end the state of war with those countries. Legally a state of war exists. "The period of war * * * extend(s) to the ratification of the treaty of peace or the proclamation of peace." *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U. S. 146, 165; *Hijo* v. *United States*, 194 U. S. 315; *Kahn* v. *Anderson*, 255 U. S. 1; *McElrath* v. *United States*, 102 U. S. 426; *The Protector*, 12 Wall. 700.

Our troops are on foreign soil, occupying the enemy countries to make certain that they will not resume hostilities. We are embarking on a broad program to restore our war-ravaged allies to a fruitful peace-time economy, a program which will impose further strains on our economy. The President recently called a special session of Congress to deal with emergency problems arising out of the war, namely the inflation which has already occurred in this country and the reconstruction of the devastated countries of Europe. Congressional committees are conducting hearings on

[2] On July 25, 1947, the President approved S. J. Res. 123 which terminated certain war statutes. At that time, the President issued a statement in which he declared that "The emergencies declared by the President on September 8, 1939, and May 27, 1941, and the state of war continue to exist, however, and it is not possible at this time to provide for terminating all war and emergency powers."

these problems and on the extension of rent control. Housing accommodations are in such short supply, and rent absorbs such a large part of the ordinary citizen's income, that Congress felt constrained to continue rent control for a further period during the transition from a war emergency to a normal economy.

These well known facts demonstrate that the problems of the war are still with us. It is the Government's position (1) that the emergency war powers of Congress do not end with the cessation of hostilities but that they continue as long as necessary to deal with the emergency resulting from the war, and (2) that that emergency still exists with respect to the shortage of housing and the resultant need for protecting the 16,000,000 tenants and their families living in rent controlled housing[3] against exorbitant rental charges.

A. THE POWER OF CONGRESS TO REGULATE RENTS UNDER THE WAR POWERS CONTINUES FOR THE DURATION OF THE EMERGENCY ARISING OUT OF THE WAR

It is well established that the power to wage war delegated to the Federal Government by the Constitution of the United States (Art. I, Sec. 8) encompasses the exercise of powers far beyond those directly concerned with the waging of a fighting war. Such functions as the fixing of maximum prices and rents (*Bowles* v. *Willing-*

[3] Hearings before Senate Committee on Banking and Currency, 80th Cong., 1st sess., Rent Control, p. 249.

ham, 321 U. S. 503; *Taylor* v. *Brown,* 137 F. 2d 654 (E. C. A.), certiorari denied, 320 U. S. 787; *Brown* v. *Wright,* 137 F. 2d 484 (C. C. A. 4), and the allocation of scarce materials (*Steuart & Bro.* v. *Bowles,* 322 U. S. 398; *Brown* v. *Wilemon,* 139 F. 2d 730 (C. C. A. 5), certiorari denied, 322 U. S. 748) clearly are embraced by it.

It is equally recognized that the exercise of the war powers by Congress is not limited to a period when actual fighting is in progress. That the war powers may validly be exercised so long as the emergency created by the war continues, and include the power to remedy the evils which have arisen from it, was aptly stated at the last term in *Fleming* v. *Mohawk Wrecking and Lumber Co.,* 331 U. S. 111. In that case, which involved the Emergency Price Control Act, the Court declared (p. 116):

> On December 31, 1946, after the creation of the Office of Temporary Controls, the President, while recognizing that "a state of war still exists", by proclamation declared that hostilities had terminated. [Proclamation 2714, 12 Fed. Reg. 1.] The cessation of hostilities does not necessarily end the war power. It was stated in *Hamilton* v. *Kentucky Distilleries and W. Co.,* 251 U. S. 146, 161, that the war power includes the power "to remedy the evils which have arisen from its rise and progress" and continues during that emergency. *Stewart* v. *Kahn,* 11 Wall. 493, 507.

In *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U. S. 146, the facts were that on November 21, 1918, after the Armistice, the President approved the War-time Prohibition Act. This Act not only was passed after the Armistice, but went into effect seven months later on July 1, 1919. The plaintiff, on October 10, 1919, brought suit to enjoin the enforcement of the Act, contending that it had become void because the war emergency had passed. The Court assumed for the purpose of the argument that the existence of a technical state of war did not support the exercise of the war powers (p. 161). It then held that the cessation of hostilities did not end the war power, but that that power included the power "to remedy the evils which have arisen from its rise and progress" (p. 161), and extended for the duration of the emergency. Concluding that the emergency still existed, the Court held the Act valid, even though hostilities had long since ceased. And in *Ruppert* v. *Caffey*, 251 U. S. 264, the Court upheld the Volstead Act, which was passed on October 28, 1919, as an exercise of the war power.[4]

That the war powers may be exercised by Congress to cope with the evils arising out of war has long been settled. *Stewart* v. *Kahn*, 11 Wall. 493,

[4] Appellees' argument below that the authorities cited were concerned only with the continuation of statutes previously passed during hostilities, not with laws passed after the cessation of hostilities, is refuted by *Ruppert* v. *Caffey*, 251 U. S., at 281, 282.

involved a federal statute extending the statute of limitations in the southern states for the period in which actions had been barred because of the Civil War. It was argued that the Act was unconstitutional, but the Court replied (11 Wall. 493, 507):

> In the latter case the power is not limited to victories in the field and the dispersion of the insurgent forces. It carries with it inherently the power to guard against the immediate renewal of the conflict, *and to remedy the evils which have arisen from its rise and progress* * * * It would be a strange result if * * * Congress, which had the power to wage war and suppress the insurrection, had no power to remedy such an evil, which is one of its consequences. [Italics supplied.]

In 1923, in *Commercial Trust Co.* v. *Miller*, 262 U. S. 51, the Court sustained the continued operation of the Trading with the Enemy Act, which had originally been upheld as an exercise of the war power,[6] saying (p. 57):

> The next contention of the Trust Company is that the act being a provision for the emergency of war, it ceased with the cessation of war, ceased with the joint resolution of Congress declaring the state of war between Germany and the United States at an end, and its approval by the President, July 2, 1921, and the Proclamation of Peace by the President August 25, 1921. The contention, however, en-

[6] *Central Trust Co.* v. *Garvin*, 254 U. S. 554.

> counters in opposition the view that the power which declared the necessity is the power to declare its cessation, and what the cessation requires. The power is legislative. A court cannot estimate the effects of a great war and pronounce their termination at a particular moment of time, and that its consequences are so far swallowed up that legislation addressed to its emergency had ceased to have purpose or operation with the cessation of the conflicts in the field. Many problems would yet remain for consideration and solution, and such was the judgment of Congress, for it reserved from its legislation the Trading with the Enemy Act and amendments thereto, and provided that all property subject to that act shall be retained by the United States "until such time as the Imperial German Government * * * shall have * * * made suitable provision for the satisfaction of all claims." See *Kahn* v. *Anderson,* 255 U. S. 1, and *Vincenti* v. *United States* (C. C. A., 272 Fed. 114, and 256 U. S. 700).

Again, in *Brown* v. *Wright,* 137 F. 2d 484 (C. C. A. 4), the same thought was expressed in relation to the Price Control Act (p. 489):

> * * * The war powers of the government "* * * inherently carry with them subsidiary faculties to deal comprehensively with all exigencies created by war or arising from its inception, progress and

termination." *Lajoie* v. *Milliken*, 241 Mass. 508, 136 N. E. 419, 423.

To the same effect see *Ex Parte Sichofsky*, 273 Fed. 694 (S. D. Cal.), affirmed, 277 Fed. 762 (C. C. A. 9).

Many decisions in the lower federal courts have held that, despite the cessation of hostilities, the war powers are still operative. Only the decision below in this case is to the contrary. The other district courts in which the question of the constitutionality of the new rent act has been raised have uniformly upheld it. In *Creedon* v. *Mitchell*, No. 7419–O'C, S. D. Calif., decided December 8, 1947 after the decision below, the court stated from the bench in reference to the instant case:

> With reference to the ruling of the Cleveland Court on the constitutionality, practically all of the other district courts in the United States have ruled that it is constitutional. This court has already ruled, and all the judges in this court have ruled that the Act is constitutional.

Similarly in *Woods* v. *Benson Hotel Corp.*, No. 2628 D. Minn., decided January 15, 1948, and *Creedon* v. *Bowman*, No. 6765 W. D. Pa., decided January 6, 1948, the courts, although noting the decision in the instant case, rejected it and held the Act constitutional.

In *Granberry* v. *Creedon*, D. Colo., No. 2266, decided September 11, 1947, the constitutionality of the Rent Act of 1947 was challenged by the plaintiff on almost the identical grounds raised here.

The plaintiff had requested that a three judge court be convened to pass on the issue. Judge Symes denied the request on the ground that there was not even a substantial question as to the validity of the Act. He declared:

> It is rather startling at this late date to the Court to have the question raised as to the constitutionality of any of these well known acts passed under the war powers of the Federal government exercised during the recent emergency, and which, according to my view, is still in existence.

In *Creedon* v. *Stratton*; 74 F. Supp. 170, 173 (D. Neb.) Judge Delehant dismissed a similar contention, declaring:

> In any event, it is without validity in the face of many decisions touching national legislation of a regulatory character during the recent and partially persisting emergency, *Bowles* v. *Willingham*, 321 U. S. 503, 64 S. Ct. 641, 88 L. Ed. 892; *Fleming* v. *Mohawk Wrecking & Lumber Co.*, 331 U. S. 111, 784, 67 S. Ct. 1129; *Porter* v. *Granite State Packing Co.*, 1 Cir., 155 F. 2d 786; *Bowles* v. *Ormesher Bros.*, D. C. Neb., 65 F. Supp. 791, and cases therein cited; as also during, and following, the comparable crisis of 1917–1918, *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U. S. 146, 40 S. Ct. 106, 64 L. Ed. 194. This court will not presume to deny the emergent character of the recited considerations, section 201 (b)

of Housing and Rent Act of 1947, supra, which impelled a frankly reluctant (section 201 (a) and (b), id.) Congress to enact the current statute touching rent regulation.

See also *Creedon* v. *Seele*, No. P-943, 945, 950, 960, S. D. Ill., decided July 15, 1947.

Cases upholding or applying other statutes enacted under the war powers since the cessation of hostilities are: *Lewis* v. *Anderson*, 72 F. Supp. 119 (S. D. Cal.), (Sugar Control Extension Act of 1947). *Porter* v. *Shibe*, 158 F. 2d 68 (C. C. A. 10); *Creedon* v. *Warner Holding Co.*, 162 F. 2d 115 (C. C. A. 8) (Price Control Extension Act of 1946, enacted on July 25, 1946, 60 Stat. 664). *Porter* v. *Granite State Packing Co.*, 155 F. 2d 786 (C. C. A. 1); *Bowles* v. *Soverinsky*, 65 F. Supp. 809 (E. D. Mich.); *Bowles* v. *Ormesher Bros.*, 65 F. Supp. 791 (D. Neb.) (Emergency Price Control Act after the termination of hostilities). *Citizens Protective League* v. *Clark*, 155 F. 2d 290 (App. D. C.), certiorari denied, 329 U. S. 787 (Alien Enemy Act after the cessation of hostilities).

The court below declared that Congress did not intend to act under the war power because "the Act is not by any express words or implied provisions tied up with any war powers". (R. 27.) But there is no requirement that Congress indicate under which of its constitutional powers it is acting when it passes legislation. The large ma-

jority of acts passed by Congress contain no declaration of policy, much less a statement as to the constitutional power under which the statute is being enacted.* It could hardly be maintained that they are therefore invalid. The issue is whether the statute can be sustained under the war power, not whether Congress recited that it was acting under that power. "* * * in passing upon constitutional questions the court has regard to substance and not to mere matters of form * * *". *Near* v. *Minnesota*, 283 U. S. 697, 708. See also *Stewart Dry Goods Co.* v. *Lewis*, 294 U. S. 550, 555.

Moreover, Congress did indicate that it was invoking the war power. The declaration of policy in the Act (Section 201 (b)) states that while Congress wishes to terminate at the earliest practicable date all federal restrictions on rents:

> At the same time the Congress recognizes that *an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period,* as well as the attainment of other salutary objectives of the above-named Act [Price Control Extension Act of 1946], it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in defense-rental areas. [Italics added.]

* For example, of the first 100 statutes passed at the 79th Cong. 2d sess., 90 contained no statement of policy whatsoever.

The "transition period" of course means the period in which the nation is moving from a war to a peace status. By its reference to the objectives of the Price Control Extension Act of 1946,[7] which in turn incorporates the declaration of purpose of the Emergency Price Control Act, Congress made it even clearer that it was acting under the war powers.

The legislative history of the present Act also shows that Congress was consciously exercising the war powers. Representative Wolcott, Chairman of the House Committee on Banking and Currency which drafted the rent bill, explicitly stated that the housing emergency with which the Congress was dealing arose out of the war. He stated: "We do not create any new emergency, but we are realistic in finding that the emergency which was created because of the war continues with us and will continue with us until we get enough rental units to lick it." (Cong. Rec., May 1, 1947, p. 4520.) See also the report of the House Committee on Banking and Currency in reporting the rent bill

[7] See Section 1A of the Extension Act, 60 Stat. 664, Section 901. It will be noted that in its statement of objectives, the Extension Act refers back to Section 1, the original declaration of purposes of the Emergency Price Control Act of 1942, which had as one of its objectives "to prevent a post emergency collapse of values." (56 Stat. 23, 50 U. S. C. App., Supp. V, Sec. 901.) The Price Control Extension Act of 1946, was held to be an exercise of the war powers in *Porter* v. *Shibe*, 158 F. 2d 68, 72 (C. C. A. 10).

(H. Rep. 317, 80th Cong., 1st sess. (1947) p. 1), which stated:

> Federal restrictions on rents on housing accommodations were imposed during the war emergency as one step in preventing undue disturbance to our economic system. The problem of when Federal restrictions on rents can be terminated in the transition period from a wartime-controlled economy to a peacetime free economy is of necessity linked with a consideration of the supply of housing accommodations. Since the two subjects are inseparable at the present time, the committee has considered them together in order to stimulate the production of housing which will in turn accelerate the termination of, and eliminate the necessity for, rent controls.

It is beyond dispute, therefore, that the Congress was aware that it was dealing with a housing emergency born of the war, and it must therefore be presumed that the Congress was meeting this emergency, as it did during actual hostilities, by the exercise of its war powers.

If it were necessary to determine whether the "emergency" recited by the statute should be construed to refer to a war emergency or some peace time emergency only which would render it invalid, by familiar law the former construction should be adopted. "The cardinal principle of statutory construction is to save and not to destroy. We have repeatedly held that as between

two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act." *Labor Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 30; see also *Anniston Mfg. Co* .v. *Davis*, 301 U. S. 337, 351.

B. THE HOUSING EMERGENCY CREATED BY THE WAR STILL EXISTS

That the housing shortage brought on by the war is still in existence is of such common knowledge as to be judicially noticeable. An elaborate factual discussion to prove the obvious would be an imposition on the Court. Here Congress found specifically in Section 201 (b) (*supra*, p. 17) that a housing emergency still exists.[8] As the Court said in *Block* v. *Hirsh*, 256 U. S. 135, in discussing an earlier rent control statute (p. 154):

> But a declaration by a legislature concerning public conditions that by necessity and duty it must know, is entitled at least to great respect. In this instance Congress stated a publicly notorious and almost world-wide fact. That the emergency declared by the statute did exist must be assumed * * *

[8] In *East New York Bank* v. *Hahn*, 326 U. S. 230, the Court held that it would not question a finding by a legislature in view of the fact that very careful study of the subject had been made by the latter, and long hearings had been held on the bill. Precisely that course was followed in regard to the Housing and Rent Act of 1947. Exhaustive hearings were held by the Senate Committee, which considered ten widely

Neither the court below nor appellees have sought factually to refute either the general finding of Congress or the specific facts, hereinafter set forth, on which it rests. In any event, there can be no question as to the truth of the Congressional finding.

In reporting this Act to the House, the Committee on Banking and Currency recapitulated the various factors creating the housing shortage.[9]

> There are several factors, in addition to the normal increase in population, which have contributed to the existing housing shortage. These include demobilization of a large number of veterans, shifts in population, less intensive use of housing accommodations, amount of new housing construction, trend away from construction of rental units, and change from tenant to owner occupancy.
>
> Heavy demobilization of members of our armed forces, particularly in late 1945 and the first half of 1946, made effective an important demand for housing accommodations. In 1945 an estimated 6,279,000 veterans of World War II were returned to

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varying bills on rent control (Cong. Rec., May 29, 1947, p. 6191), and similar hearings were also held by the House. Hearings before Senate Committee on Banking and Currency, 80th Cong., 1st sess., Rent Control; Hearings before House Committee on Banking and Currency, 80th Cong., 1st sess., on H. R. 2549, Housing and Rent Control.

[9] House Report No. 317, 80th Cong., 1st sess., p. 2.

civilian life, in 1946 the number so returned was 5,659,000, and in 1947 to February 28 an additional 212,000 veterans were demobolized. Statistics are not available as to the number of new family units created by returning veterans but undoubtedly the figure is substantial and in many cases creation of new family units was delayed until these veterans were returned to civilian life. The importance and delayed impact of the 11,938,000 veterans returned to civilian life in 1945 and 1946 on an already acute housing shortage is readily apparent.

During the war years there were important shifts in population to war-industry centers. Between 1940 and 1945 there was an increase of 15.3 percent in the number of urban-occupied dwelling units. The increase in rural non-farm-occupied dwelling units amounted to only 5.3 percent and there was an actual decrease in the number of rural-farm-occupied dwelling units of 11.1 percent.

During the war years many families enjoyed substantial increases in annual incomes. One result of this was a less intensive use of housing accommodations.

The testimony of General Fleming, then Administrator of the Office of Temporary Controls, before the Senate Committee responsible for the

present statute, sets forth the facts in more detail:[10]

> Despite the rapid upswing in residential construction during 1946, the Nation continues to be plagued with a critical housing shortage. The supply of dwelling accommodations, particularly rental units, is still radically out of balance with demand.
>
> The severity of this shortage is strikingly shown in the latest vacancy statistics. In 88 cities surveyed by the Bureau of Labor Statistics and the Bureau of the Census during 1946, vacancies in rental units were virtually nonexistent. The vacancy rates in habitable accommodations for these cities ranged from zero to a maximum of 1 percent, with an average well below one-half of 1 percent. This is in marked contrast to the 5 to 10 percent vacancy rate considered as "normal" in the operation of rental property.
>
> Veterans are particularly hard hit by the housing shortage. According to a survey conducted by the Bureau of the Census, June 1946, about 1½ million married veterans were living doubled up with other

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[10] Hearings before Senate Committee on Banking and Currency, 80th Cong., 1st sess., on Rent Control, pp. 160–162.

See also testimony of General Fleming in Hearings before the House Committee on Banking and Currency, 80th Cong., 1st sess., on H. R. 2549, Housing and Rent Control, p. 5, in which he stated: "The acute housing shortage is still with us, and there is no prospect that a normal rental market will be restored in the country before June 30 of next year."

families. An additional 300,000 were living in rented rooms or trailer camps. In other words, 30 percent of our married veterans were living doubled up or in rooms and trailers, at that time. The overall housing picture is little changed since that time.

What has caused the shortage?

The enormous deficit of housing accommodations existing today results from a combination of contributing economic and social forces set in motion by the war.

First, the net increase in the number of familes is at the highest point for all time. It was at an annual rate of 800,000 in the last half of 1946, and it is estimated that we will have a net increase of considerably over a million this year.

* * * * *

This increase is greater than the net increase in the number of dwelling units which the construction industry has been able to produce, and is one of the reasons why vacancy rates continue to hover around the zero mark, and why we will continue to have an acute problem at least through the middle of next year.

Second, the supply of new houses was curtailed during the war years to permit industrial construction and war production. Homes could be postponed but tanks and warships could not. By the year 1941, residential construction had reached a post-depression peak of 715,000 family units.

But with the war restrictions, the number decreased year by year until 1944, when less than 200,000 units were reported to have been placed under construction. If construction could have continued at the 1941 rate during the war period, at least 1,500,000 more units would have been added than were actually built during the war period.

Third, the enormous volume of internal migration which began with defense activities has swollen the population of many urban areas. Well above 6,000,000 families left their communities. Many of these persons came from rural areas and have remained in crowded industrial centers.

And, finally, the large increase in consumer incomes has accentuated the housing shortage. Many families previously unable to maintain a separate dwelling are able now to afford a place of their own. Similarly, families previously forced for economic reasons to live in substandard or inferior accommodations have been able to move to better quarters.

The pressure today on the housing market is greater than that which occurred during the 1920's. The average increase in the number of families then was only 600,000 per year. In 1947 we are expecting, if the census is correct, a net increase in the number of families nearly double this figure. During the 1920's we had no rent control, with the result that from

December 1917 until December 1921 alone, rents rose 50 per cent on the average. They continued to rise for several years more. In some cities the rents more than doubled.

In the light of this experience, and facing the fact that the inflationary pressures upon rentals are much more powerful now than they were after World War I, it is not difficult to foresee what would happen if present controls on rents were suddenly lifted.

With an inadequate supply of housing on the one hand, and a clamoring demand for family dwellings on the other, the elimination of rent ceilings would result inevitably in skyrocketing rentals. With landlords permitted to charge what the traffic would bear, eviction pressures would become enormous.

The effect of the war upon the construction of new dwelling units is shown by the following table, which lists both the total number of nonfarm dwelling units and the number of permanent (as distinct from temporary) units constructed since 1937:[11]

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[11] The figures for the total units are taken from H. Rept. No. 317, 80th Cong., 1st sess., p. 3, for the years up to 1945, and for 1946 and 1947 from U. S. Bureau of Labor Statistics, *Construction*, December 1947, p. 4. The figures for permanent units are taken from a table submitted by H. E. Riley, Chief, Construction Statistics Division, U. S. Bureau of Labor Statistics, to the Joint House and Senate Committee on Housing, 80th Cong., 2d sess., during his testimony on January 12, 1948 (on file with the Committee but not yet printed).

Year	Total nonfarm dwelling units	Permanent nonfarm dwelling units
1937	336,000	336,000
1938	406,000	406,000
1939	515,000	515,000
1940	603,000	603,000
1941	715,000	707,100
1942	497,000	356,000
1943	350,000	191,000
1944	169,000	141,800
1945	247,000	209,300
1946	776,200	670,500
1947 (11 months)	799,000	794,600

The average number of permanent units built during the four war years 1942–1945 was 224,525, as contrasted with 557,778 during the four previous years.

The resulting scarcity in housing accomodations is illustrated by the percentage of loss in rents due to vacancies. A vacancy rate of five to ten per cent is regarded as normal. (See statement of General Fleming, *supra*, p. 23). The figures for the years 1939 to 1946 are: [12]

	Vacancy rate							
	1939	1940	1941	1942	1943	1944	1945	Year ending June 30, 1946
Apartment houses in 63 cities [1]	8.6	8.1	6.2	2.8	0.9	0.2	0.2	0.2
Small structures in 60 cities [2]	9.1	7.0	4.2	2.1	1.0	0.5	0.5	0.4

[1] An apartment house is a housing structure of more than 4 units.
[2] A small structure is a housing accommodation of 4 or less units.

[12] Hearings before Senate Banking and Currency Committee on Controlling Rent, 80th Cong., 1st sess. (1947) p. 380.

In a survey published by the Bureau of the Census of the Department of Commerce on August 24, 1947, the vacancy rate for rental housing in the 34 metropolitan areas examined was, with only one exception, 1% or less of the total dwellings. In four Ohio areas the average was two-tenths of one percent. The figures for each of the communities are given below.[13] According to

[13] Current Population Reports, Housing, U. S. Bureau of the Census, Series P–71, Report Number 35.

Metropolitan District	*Vacancy rate of rental dwellings*
Akron, Ohio	0.1
Allentown-Bethlehem-Easton, Pa	.1
Atlanta, Ga	.2
Baltimore, Md	.4
Birmingham, Ala	.3
Boston, Mass	.4
Chicago, Ill	.2
Columbus, Ohio	.3
Dallas, Texas	.2
Denver, Colo	.4
Detroit, Mich	—
Los Angeles, Cal	.1
Lowell-Lawrence-Haverhill, Mass	.2
Memphis, Tenn	.7
Minneapolis-St. Paul, Minn	.1
New Haven, Conn	.2
New Orleans, La	.3
New York-Northeastern New Jersey	.1
New York Division	.1
New Jersey Division	.3
Norfolk-Portsmouth-Newport News, Va	1.7
Philadelphia, Pa	.5
Pittsburgh, Pa	.2
Portland, Oreg	1.0
Rochester, N. Y	.1
Salt Lake City, Utah	.2
San Antonio, Texas	.7
San Francisco-Oakland, Calif	.2
Scranton-Wilkes-Barre, Pa	.3
Seattle, Wash	.6
St. Louis, Mo	.3
Toledo, Ohio	.3
Tulsa, Okla	.4

the Bureau of the Census, the vacancy rate of rental dwelling in urban areas in the United States was 0.4% in April 1947, a decrease from 0.9% in November 1945.[14]

A consequence of the housing shortage was that in April, 1947, there were 2,513,000 sub-families (a husband and wife and children, if any) living with another family in the United States, an increase of 364,000 since February 1946.[15]

The effect of the shortage of housing upon rents appears from figures obtained in studies made by the Housing Expediter, comparing rentals on controlled and uncontrolled housing.[16] These studies show that for 77 cities in 17 states rents on newly constructed housing, which is exempted from rent control, averaged $83.15 per month, 69% above the maximum rents for comparable controlled accommodations. Reports from 47 cities in 13 states covering converted rental units show

Metropolitan District	*Vacancy rate of rental dwellings*
Washington, D. C.	.2
Worcester, Mass.	.1
Youngstown, Ohio	.1

[14] Current Population Reports, Housing, Bureau of the Census, Series P–70, No. 1, Tables 1 and 23.

[15] Characteristics of Secondary Families, Bureau of the Census Report, February 5, 1947, Series P–S, No. 15; Current Population Reports, Bureau of the Census, Series P–70, No. 1, Table 20.

[16] The information contained in these studies has been brought to the attention of the Solicitor General, but is unpublished. It serves to give specific content to facts set forth generally in General Fleming's statement, and in the House Committee Report (No. 317, pp. 10–11), and in any event is of common knowledge.

an average monthly rental of $68.94 per unit as against an average of $46.89 for comparable units under rent control, or 47% higher.

In brief, it is clear that there still exists such an acute housing shortage that if rents were left to be determined by the forces of supply and demand, severe hardship would be imposed upon millions of tenants and their families. That this emergency is a direct result of the war is beyond dispute. A housing shortage resulting from the cessation of construction because of the necessity of allocating material to the manufacture of munitions is just as much a result of the war as a shortage created by the military destruction of homes. Congress has felt obliged to deal with this emergency by taking steps to encourage the construction of new houses and to assist veterans and others to finance the purchase of homes. Congress has concluded, and the facts reveal, that such measures alone are not enough, and that the rentals for existing housing accommodations must also be controlled if the people are to be adequately protected from the effect of the war on housing. We think it is significant, in this respect, that at this time and under the same conditions, other civilized nations, including those in which there were no combat operations, are meeting the same problem by regulating rents.[17]

[17] The Bureau of Labor Statistics advises that rent controls are currently in effect in Great Britain, Canada, Australia,

Unquestionably the burden is upon appellees to prove that there is no basis for the Congressional findings that the housing emergency resulting from the war is still in existence.[18] Appellees here have not shown, and cannot show, that the Congressional findings were arbitrary or unreasonable.

II

THE ACT DOES NOT UNCONSTITUTIONALLY DELEGATE POWER TO THE EXPEDITER

The District Court held that the Housing and Rent Act of 1947 was invalid in that it "lacks in uniformity of application and distinctly constitutes a delegation of legislative power not within the grant of Congress" (R. 28). The District Court based this conclusion upon the provision of Section 204 (c) of the Act that "the Housing Expediter is hereby authorized and directed to remove any or all maximum rents

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Sweden, Norway, Denmark, Netherlands, and Belgium. This list, which does not purport to be exhaustive, has been checked with the embassies of the named countries. For Great Britain, see the Rent and Mortgage Interest Restrictions Act, 1939 (*32 Halsbury's Laws Continuation Vol. 1939, p. 971*) and Furnished Houses (Rent Control) Acts, 1946. For Canada, the various Orders-in-Council and orders of the Wartime Prices and Trade Board are collected in part 32 of *Emergency Laws, Orders and Regulations of Canada.*

[18] *United States* v. *Carolene Products Co.*, 304 U. S. 144, 148, 152; *Helvering* v. *Davis*, 301 U. S. 619, 640, 641; *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U. S. 146; *Legal Tender Cases*, 12 Wall. 457, 531; *Stafford* v. *Wallace*, 258 U. S. 495, 521.

before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met".

Insofar as the District Court based its decision upon "lack of uniformity" in the statute because it applied only to certain areas, it is to be observed that the law is just as uniform in its application as the Emergency Price Control Act; indeed, it applies to the same defense rental areas. The validity of the Price Control Act as so applied was sustained in *Bowles* v. *Willingham,* 321 U. S. 503. The war powers of Congress, like the commerce power, are not required to be exercised uniformly throughout the country so long as there is no arbitrary classification. Cf. *Currin* v. *Wallace,* 306 U. S. 1, 13–14; *Hirabayashi* v. *United States,* 320 U. S. 81, 100.

It may also be observed that the subsection found by the District Court to contain an invalid delegation of legislative authority is not that which imposes rent controls, but that which permits the Housing Expediter to remove such controls in specified circumstances. Respondents are thus complaining only of the statutory provision for the termination of rent control in prescribed areas, not of any of the provisions which subject them to regulation.

In any event, insofar as the District Court held that the Act contains an unconstitutional delegation of legislative power in that the Housing Expediter is authorized to terminate rent controls in any area in which there is no longer need for such controls, its decision is in square conflict with *Bowles* v. *Willingham,* 321 U. S. 503. In that case this Court held that the grant of far greater powers under the Emergency Price Control Act to the Price Administrator did not involve an unconstitutional delegation of legislative power. Under that act, in addition to the power to decontrol rents, the Administrator was also empowered to impose controls in new areas and to regulate evictions. Under the original act, Congress directed that maximum rents be fixed in those areas where defense activities resulted or threatened to result in increased rentals inconsistent with the purposes of that Act. This standard as to where rent controls should be imposed was approved in *Bowles* v. *Willingham, supra,* p. 514. Similarly, under the present act, the Housing Expediter is directed to remove the rent controls when "the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations, or when the demand for rental housing accommodations has been otherwise reasonably met." Thus it is not left to the Expediter's unbridled discretion to decontrol particular areas,

but an adequate standard is established to guide him. "The essentials of the legislative function are the determination of the legislative policy and its formulation as a rule of conduct. Those essentials are preserved when Congress specifies the basic conclusions of fact upon ascertainment of which, from relevant data by a designated administrative agency, it ordains that its statutory command is to be effective." *Opp Cotton Mills* v. *Administrator,* 312 U. S. 126, 145.

III

THE ACT DOES NOT VIOLATE THE FIFTH AMENDMENT

In their answer, appellees specifically raised as a defense that the Act violates the Fifth Amendment because Section 202 (c) exempts from control hotels, motor courts, transient tourist homes, new housing built or created by conversion since February 1, 1947, and housing which was not rented, except to a member of the landlord's family, between February 1, 1945 and January 31, 1947. It is hardly necessary to cite authority to the effect that Congress may establish reasonable classifications without violating the Fifth Amendment. *Steward Machine Co.* v. *Davis,* 301 U. S. 548, 584; *United States* v. *Petrillo,* 332 U. S. 1. "The Fifth Amendment contains no equal protection clause and it restrains only such discriminatory legislation by Congress as amounts

to a denial of due process. * * * Congress may hit at a particular danger where it is seen, without providing for others which are not so evident or so urgent." *Hirabayashi* v. *United States*, 320 U. S. 81, 100.

The reason for differentiating the exempted classes of housing were set forth in the House Committee Report (No. 317, 80th Cong., 1st sess., pp. 13–14), as follows:

> Certain types of housing accommodations are excluded from rent controls. They fall into two categories, namely, (1) where such exclusions will stimulate the provision of sorely needed rental units; and (2) in the case of hotel, tourist home, and motor-court housing accommodations, catering principally to transients, whose costs of operation consist in substantial measure of personal services, which costs have increased considerably.
>
> In the first category are included new construction, housing accommodations converted from existing private residential use into rental housing accommodations providing additional housing accommodations, and housing accommodations not rented (other than to members of the immediate family of the occupant) during the period February 1, 1945, to January 1, 1947, as housing accommodations. The committee believes that this action will provide a stimulus for the construction of new rental

units which are so much in demand and so necessary to the solution of the present housing needs and will give added impetus to the conversion of existing construction into additional rental units, together with bringing on the rental market units not rented during the 24-month period—February 1, 1945, through January 1, 1947.

In the latter case the long nonrental requirement is sufficient, in the judgment of the committee, to exclude rental units which were willfully withheld pending expectation of the termination of rent controls. Existing vacancies, and new vacancies, resulting from deaths and dissolutions of families, were estimated at 945,000 units for 1946, and an added inducement is given to convert or make available such accommodations for rental use. The committee believes that the exclusion from rent controls of this category of potential rental units will have the combined effect of making available quickly substantial numbers of rental units.

The second category consists of hotel accommodations occupied by persons who are provided customary hotel services, motor courts, and tourist homes serving transient guests exclusively. As stated, operation costs in this category consists of approximately 65 percent in the personal services rendered. Since such costs have risen substantially, this category should be excluded, in the judgment of the committee.

An almost identical argument was made and rejected by the Court in *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170, which involved the validity of a New York State statute controlling rents. It was there argued to the Court (p. 195) that:

> The statute denies to the plaintiff the equal protection of the laws. There was no reasonable ground for excluding hotels, lodging houses, new buildings and buildings used for commercial, manufacturing or other business purposes; or for not extending the regulations to cities other than those included when like conditions were conceded to exist.

The Court rejected this argument, declaring (pp. 198–199):

> * * * It is said too that the laws are discriminating, in respect of the cities affected and the character of the buildings, the laws not extending to buildings occupied for business purposes, hotel property or buildings now in course of erection, &c. But as the evil to be met was a very pressing want of shelter in certain crowded centers the classification was too obviously justified to need explanation, beyond repeating what was said below as to new buildings, that the unknown cost of completing them and the need to encourage such structures sufficiently explain the last item on the excepted list.

A similar argument was also rejected when made against rent control under the Emergency Price Control Act. In *Taylor* v. *Brown*, 137 F. 2d 654, certiorari denied, 320 U. S. 787, the Emergency Court of Appeals held (p. 660):

> The complaint is that the act and regulation discriminate against the housing industry because the act exempts wages, prices in a number of specified industries, and rents of nonresidential real estate and because the regulation exempts from control rents of certain employees and agricultural workers. We find nothing invalid in this classification, however. It is clear that Congress found that a greater need existed for the regulation of residential rents than of those of nonresidential properties or of wages or the charges of the exempted industries. There is a strong presumption that Congress correctly understood the needs of the Nation and that the discriminations which it placed in the act were based upon adequate grounds. *Middleton* v. *Texas Power & Light Co.*, 1919, 249 U. S. 152, 39 S. Ct. 227 * * *"

CONCLUSION

The judgment below should be reversed and the case remanded with instructions to grant the injunction prayed for by the Expediter.

Respectfully submitted.

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JANUARY 1948.

APPENDIX

Housing and Rent Act of 1947, Pub. L. 129, 80th Cong., 1st Sess.

TITLE II—MAXIMUM RENTS

DECLARATION OF POLICY

SEC. 201. (a) The Congress hereby reaffirms the declaration in the Price Control Extension Act of 1946 that unnecessary or unduly prolonged controls over rents would be inconsistent with the return to a peacetime economy and would tend to prevent the attainment of the goals therein declared.

(b) The Congress therefore declares that it is its purpose to terminate at the earliest practicable date all Federal restrictions on rents on housing accommodations. At the same time the Congress recognizes that an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period, as well as the attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in defense-rental areas. Such restrictions should be administered with a view to prompt adjustments where owners of rental housing accommodations are suffering hardships because of the inadequacies of the maximum rents applicable to their housing accommodations, and under procedures

designed to minimize delay in the granting of necessary adjustments, which, so far as practicable, shall be made by local boards with a minimum of control by any central agency.

(c) To the end that these policies may be effectively carried out with the least possible impact on the economy pending complete decontrol, the provisions of this title are enacted.

DEFINITIONS

SEC. 202. As used in this title—

(a) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or a legal successor or representative of any of the foregoing.

(b) The term "housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes (including houses, apartments, rooming- or boarding-house accommodations, and other properties used for living or dwelling purposes) together with all privileges, services, furnishings, furniture, and facilities connected with the use or occupancy of such property.

(c) The term "controlled housing accommodations" means housing accommodations in any defense-rental area, except that it does not include—

(1) those housing accommodations, in any establishment which is commonly known as a hotel in the community in which it is located, which are occupied by persons who are provided customary hotel service such as maid service, furnishing and laundering of linen, telephone and

secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; or

(2) any motor court, or any part thereof; or any tourist home serving transient guests exclusively, or any part thereof; or

(3) any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect, or (B) which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations.

(d) The term "defense-rental area" means any part of any area designated under the provisions of the Emergency Price Control Act of 1942, as amended, prior to March 1, 1947, as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of such Act, in which maximum rents were being regulated under such Act on March 1, 1947.

(e) The term "rent" means the consideration demanded or received in connection with the use or occupancy or the transfer of a lease of any housing accommodations.

TERMINATION OF RENT CONTROL UNDER EMERGENCY PRICE CONTROL ACT OF 1942

SEC. 203. (a) After the effective date of this title, no maximum rents shall be established or maintained under the authority of the Emergency Price Control Act of 1942, as amended, with respect to any housing accommodations.

(b) On the termination of rent control under this title all records and other data used or held in connection with the establishment and maintenance of maximum rents by the Housing Expediter, and all predecessor agencies, shall, on request, be delivered without reimbursement to the proper officials of any State or local subdivision of government that may be charged with the duty of administering a rent-control program in any State or local subdivision of government to which such records and data may be applicable: *Provided, however,* That any such records or data shall be so made available subject to recall for use in carrying out the purposes of this title.

RENT CONTROL UNDER THIS TITLE

SEC. 204. (a) The Housing Expediter shall administer the powers, functions, and duties under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until February 29, 1948.

(b) During the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand,

accept or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order make such adjustments in such maximum rents as may be necessary to correct inequities or further to carry out the purposes and provisions of this title: *And provided further,* That in any case in which a landlord and tenant, on or before December 31, 1947, voluntarily enter into a valid written lease in good faith with respect to any housing accommodations for which a maximum rent is in effect under this section and such lease takes effect after the effective date of this title and expires on or after December 31, 1948, and if a true and duly executed copy of such lease is filed, within fifteen days after the date of execution of such lease, with the Housing Expediter, the maximum rent or such housing accommodations shall be, as of the date such lease takes effect, that which is mutually agreed between the landlord and tenant in such lease if it does not represent an increase of more than 15 per centum over the maximum rent which would otherwise apply under this section. In any case in which a maximum rent for any housing accommodations is established pursuant to the provisions of the last proviso above, such maximum rent shall not thereafter be subject to modification by any regulation or order issued under the provisions of this title. No housing accommodations

for which a maximum rent is established pursuant to the provisions of the last proviso above shall be subject, after December 31, 1947, to any maximum rent established or maintained under the provisions of this title.

(c) The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met.

(d) The Housing Expediter is authorized to issue such regulations and orders, consistent with the provisions of this title, as he may deem necessary to carry out the provisions of this section and section 202 (c).

(e) (1) The Housing Expediter is authorized and directed to create in each defense-rental area, or such portion thereof as he may designate, a local advisory board, each such board to consist of not less than five members who are representative citizens of the area, to be appointed by the Housing Expediter, from recommendations made by the respective Governors. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the board shall make recommendations to the officials administering this title within its area. The local boards may make such recommendations to the Housing Expediter as they deem advisable with respect to the following matters:

(A) Decontrol of the defense-rental area or any portion thereof;

(B) The adequacy of the general rent level in the area; and

(C) Operations generally of the local rent office, with particular reference to hardship cases.

(2) The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

(3) Within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropriate action shall promptly be taken to carry such recommendation into effect.

(4) Immediately upon the enactment of this Act the Housing Expediter shall communicate with the governors of the several States advising them of the provisions of this subsection and of the number and location of defense-rental areas in their respective States and requesting their cooperation in carrying out such provisions.

(f) The provisions of this title shall cease to be in effect on February 29, 1948.

RECOVERY OF DAMAGES BY TENANTS

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment, for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided*, That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be

a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same plaintiff prior to the institution of the action in which such judgment was rendered.

PROHIBITION AND ENFORCEMENT

SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

MAINTENANCE OF ACTIONS FOR CERTAIN ALLEGED PAST VIOLATIONS

SEC. 207. No action or proceeding, involving any alleged violation of Maximum Price Regulation Numbered 188, issued under the Emergency Price Control Act of 1942, as amended, shall be

maintained in any court, or judgment thereon executed or otherwise proceeded on, if a court of competent jurisdiction has found, or by opinion has declared, that the person alleged to have committed such violation acted in good faith and that application to such person of the "actual delivery" provisions of such regulation would result or has resulted in extreme hardship.

PROPERTY, PERSONNEL, AND APPROPRIATIONS

SEC. 208. (a) The records, property, personnel, and funds, relating primarily to rent control, transferred to the Housing Expediter by or pursuant to Executive Order Numbered 9841, dated April 23, 1947, may be used for the purpose of carrying out the powers, functions, and duties of the Housing Expediter under this title; except that any personnel so transferred who are found to be in excess of the needs of the Housing Expediter for the exercise of such powers, functions, and duties shall be separated from the service.

(b) There are authorized to be appropriated to the Housing Expediter such sums as may be necessary to carry out the provisions of this Act.

EVICTION OF TENANTS

SEC. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the

tenant continues to pay the rent to which the landlord is entitled unless—

(1) under the law of the State in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;

(2) the landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations;

(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;—

(4) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of substantially altering, remodeling, or demolishing them and replacing them with new construction, and the altering or remodeling is reasonably necessary to protect and conserve the housing accommodations and cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by Federal, State, or local law for the alterations, remodeling, or any construction planned; or

(5) the housing accommodations are nonhousekeeping, furnished housing accommodations, located within a single dwelling unit not used as a rooming or boarding house and the remaining portion of which is occupied by the landlord or his immediate family.

(b) Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided,* That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities, exceeds the allowable maximum.

ADMINISTRATIVE PROCEDURE ACT INAPPLICABLE

SEC. 210. Section 2 (a) of the Administrative Procedure Act, as amended, is amended by inserting after "Selective Training and Service Act of 1940;" the following: "Housing and Rent Act of 1947;".

APPLICATION

SEC. 211. The provisions of this title shall be applicable to the several States and to the Terri-

tories and possessions of the United States but shall not be applicable to the District of Columbia.

EFFECTIVE DATE OF TITLE

SEC. 212. This title shall become effective on the first day of the first calendar month following the month in which this Act is enacted.

SHORT TITLE

SEC. 213. This Act may be cited as the "Housing and Rent Act of 1947".

The pertinent portions of the Controlled Housing Rent Regulation, 12 F. R. 4331, provide as follows:

> SEC. 2. (a). *General prohibition.*—Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall offer, demand or receive any rent for or in connection with the use or occupancy on and after the effective date of this regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. A reduction in the minimum space, services, furniture, furnishings, or equipment required under section 3 of this regulation shall constitute an acceptance of rent higher than the maximum rent. Lower rents than those provided by this regulation may be demanded or received.
>
> SEC. 4. (a). *Maximum rents in effect on June 30, 1947.*—The maximum rent for any housing accommodation under this regula-

tion (unless and until changed by the Expediter as provided in section 5) shall be the maximum rent which was in effect on June 30, 1947, as established under the Emergency Price Control Act of 1942, as amended, and the applicable rent regulation issued thereunder, except as otherwise provided in this section.

U. S. GOVERNMENT PRINTING OFFICE: 1948

In the Supreme Court of the United States

No. 486.

OCTOBER TERM, 1947.

TIGHE E. WOODS,
Housing Expediter, Office of the Housing Expediter,
Appellant,

vs.

THE CLOYD W. MILLER CO.,
a Corporation, and
CLOYD W. MILLER,
Appellees.

BRIEF FOR APPELLEES.

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QUESTION NOT PRESENTED.

Specification 3 in appellant's brief, that is, whether the Act violates the due process clause of the Fifth Amendment, is not included in the assignment of errors (R. 32) or in the statement of points to be relied upon filed by the appellant (R. 35).

The question is raised whether this specification can be considered here.

STATUTE INVOLVED.

The sole question here is whether the law is invalid, as appellees contend. This being so, no regulation of the Expediter is involved.

The pertinent sections of Title II of the Housing and Rent Act of 1947, Pub. Law 129, 80th Cong., 1st Sess., 50 U. S. C. A. App., Paragraph 901, *et seq.*, are printed verbatim in the Appendix, pp. 26-34. It is hereinafter called the "Act" or the "1947 Act."

It was enacted on June 30, 1947, and effective July 1, 1947. In Section 201 (a) it reaffirms "the declaration in the Price Control Extension Act of 1946 that unnecessary or unduly prolonged controls over rents would tend to prevent the attainment of the goals therein declared." The reference is to Section 3 a (2) Price Control Extension Act of 1946, Chapter 671, Pub. Law 548, 1946 U. S. C. A. Cong. Supp., page 632. It is quoted here verbatim:

> "That unnecessary or unduly prolonged controls over prices and rents and uses of subsidies would be inconsistent with the return to such a peacetime economy and would tend to repress and prevent the attainment of this and other goals herein declared;"

This is Section 1 A (a) (2) of the Emergency Price Control Act of 1942 as amended, 56 Stat. 23, 50 U. S. C. A. App., Paragraph 901, *et seq.* This Act will be hereinafter called the 1942 Act.

It is further declared in Section 201 (b) of the Act that it is the intention to terminate as early as practicable all federal restrictions on rents, but that an "emergency exists" and for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period it is necessary for a limited time to impose certain restrictions upon rents.

The Act in substance provides as follows, with section numbers designated:—*202. Definitions*; (b) housing accommodations, and (c) "Controlled Housing Accommodations," which are "housing accommodations" except that it does not include (1) hotels, (2) motor courts and (3) accommodations completed or converted after February 1, 1941, war veterans' housing and accommodations not rented from February 1, 1945, to January 31, 1947; defense rent areas are those designated under the 1942 Act: *203* (a) No maximum rents shall be established or maintained under the 1942 Act; *204* (a) specifies authority of the Housing Expediter and extends that office to February 29, 1948;

(b) prohibits demand for or receipt of rent in excess of the maximum established under the 1942 Act, but provides for lease and adjustment to correct inequities. The balance of the section, excepting (f), concerns decontrol procedure, and (f) fixes the termination date of the Act as February 29, 1948. (Subject to earlier decontrol in any part of the defense rental area.) *205* provides for recovery by tenants; *206* (a) makes it unlawful to demand or receive excess rents, and (b) provides jurisdiction for enforcement; *207* relates to action by tenants; *209* prohibits evictions of tenants except in certain cases; *211* provides that Title II shall apply to the several states and territories but not to the District of Columbia.

STATEMENT.

Appellant's statement should be modified and amplified as follows:

The preliminary injunction was granted without opposition of defendants, who merely raised the constitutional question, and it was deferred for later consideration. (R. 20.) The District Court held the Act unconstitutional because it has no constitutional basis for its validity and that a technical condition of war does not confer this power upon Congress, because it unlawfully delegated legislative power and because "its effect is the taking of private property contrary to the provisions of the Constitution." (R. 25, 28.)

SUMMARY OF ARGUMENT.

The Housing and Rent Act of 1947 is unconstitutional in three respects:

1. It operates to take property without due process of law in violation of the Fifth Amendment. The right to rent is an essential of ownership of property and the denial of the current rental is a taking. Absence of provision for hearing or appeal or for refraining from offering

the property for rent in the Act, takes away the basis of the rulings on this point sustaining the prior rent law.

2. There is an unreasonable and unlawful delegation of legislative power. The Expediter is empowered to absolutely decontrol any and all rent areas. This power was not given to the administrator by the prior rent act and decisions sustaining it are not applicable. This power to absolutely decontrol is essentially the power to repeal the act.

3. Congress lacked the power to enact a law regulating rents and possession of rental property at the time of the enactment on June 30, 1947. Its power is solely by delegation by the constitution, with implied power to carry into effect the express powers. No such regulatory power of intra-state property or transactions is provided, unless it be by war powers and then under war conditions. Emergencies other than a war emergency, widely existing similar conditions, economic or otherwise or beneficent aims, do not supply the power. Nor does Congress have a police power under which such regulations can be enacted.

The war powers, taken together, authorize any action Congress deems necessary or helpful in waging war or resisting invasion or suppressing insurrection, or defending the nation, subject to other constitutional provisions. The regulation of intra-state matters, to be valid must have some essential connection with the national defense and security. While the power always exists, it is latent until and unless conditions are present that call it into action.

On June 30, 1947, there was no actual war—no danger of renewal of hostilities. For over twenty months there had been no war except what is termed technical war—this because peace had not been declared officially. Technical war cannot furnish the power to regulate intra-state matters—otherwise Congress by refraining from declaring peace could continue such regulations indefinitely.

Congress seems to recognize the source of its power to regulate intra-state affairs such as rents and prices by its declaration in the Act of 1942, in which it declares it to be in the interest of the national defense and security and necessary to the effective prosecution of the present war.

The Act has no relation to war effort and is declared to concern the transition period and the return to peace-time economy. In this declaration Congress recognizes the termination of war conditions and the return to peace. Its war powers to regulate rents had expired.

ARGUMENT.

I.

THE ACT VIOLATES THE FIFTH AMENDMENT— THE DUE PROCESS CLAUSE.

The District Court held that the effect of the Act is to take property without due process and that it is unconstitutional. The opinion of the Court and the conclusions of law so state. (R. 25, 28.) This is not assigned as an error and it is not included in the assignment of points upon which the appellant intends to rely in its appeal. (R. 32, 35.)

Under the rules of this Court it seems that this point will not be considered.

> *Rule 13. 9.* "When the record is filed, or within fifteen days thereafter, the appellant shall file with the Clerk a definite statement of the points on which he intends to rely * * *." "The Court will consider nothing but the points of law so stated."

If this is a correct conclusion from the rules of court it is submitted that the judgment of the District Court holding the law to be unconstitutional must be affirmed.

However, if this point is to be considered the appellees present their argument in support of the finding of the District Court.

The Act denies the defendants the right to a fair and reasonable rent and thereby takes from defendants the

difference between the amount of a fair and reasonable rent and the maximum rent that is established. But for the Act, higher rentals could have been secured. This is a matter of common knowledge and is in the finding of facts. (R. 25.) The right to use one's property is an essential attribute of property. Taking away this right is a taking of property.

It is stated in 12 *Am. Jur.* 355, paragraph 678:

> "The right to devote real estate to any legitimate use is property within the protection of the Constitution, such as the right to use it for advertising purposes."

Washington ex rel. Seattle Trust Co. v. Roberg, 278 U. S. 116;
Mead v. Portland, 200 U. S. 148.

And on page 343, paragraph 651:

> "An owner cannot be deprived of any of the essential attributes which belong to the right of property, such as use, enjoyment, purchase, mortgage, and sale; in fact, any contracts in relation thereto. He cannot be deprived of the increment of property or the increment of proceeds into which property has been converted."

Chicago, R. I. & P. R. Co. v. United States, 284 U. S. 80; *Henkels v. Sutherland*, 271 U. S. 298.

Further, in 42 *Am. Jur.*, page 189, paragraph 4:

> "Property, as heretofore defined, is composed of certain constituent elements, to-wit, the unrestricted right of use, enjoyment, and disposal of the particular subject of property. Of these elements the right of user is the most essential and beneficial. Without it all other elements would be of little effect, since if one is deprived of the use of this property, little but a barren title is left in his hands. This right of free and untrammeled user for legitimate purposes is fundamental and within the protection of the Federal Constitution. * * * The right or element of user

necessarily includes the right and power of excluding others from using the subject of property."

In *Terrace v. Thompson*, 263 U. S. 197, page 215, the Court says:

> "The Terraces' property rights in the land include the right to use, lease or dispose of it for lawful purposes (*Buchanan v. Waverly*, 245 U. S. 60, 74) and the Constitution protects these essential attributes of property (*Holden v. Hardy*, 169 U. S. 366, 391) * * *"

And in *Buchanan v. Waverly*, 245 U. S. 60, page 74.

> "Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use and dispose of it. The Constitution protects these essential attributes of property. *Holden v. Hardy*, 169 U. S. 366, 391. Property consists of the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land. 1 *Blackstone's Commentaries* (Cooley's Ed.) 127."

The 1942 Act was upheld by this Court against the attack that it violated the Fifth Amendment for the reasons assigned that provision is made therein for protest by the owner and for further appeal to the Emergency Circuit Court of Appeals, and that the Act does not require an owner to rent his property. *Bowles v. Willingham*, 321 U. S. 503; pages 521 and 517. On page 521 the Court says:

> "But when Congress has provided for judicial review after the regulations or orders have been made effective, it has done all that due process under the War emergency requires."

On page 517:

> "We are not dealing here with a situation which involves a 'taking' of property." *Wilson v. Brown*, *supra* (137 Fed. 2nd 348, 352-354). "By Paragraph 4 (d) of the Act it is provided: 'Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent.' There is no requirement that the apartments in ques-

tion be used for purposes which bring them under the Act."

Yakus v. United States, 321 U. S. 414.

The 1947 Act does not contain the provisions that this Court held saved the constitutionality of the 1942 Act. There is no provision for protest or for appeal. Nor does it provide that no person is required to offer any accommodation for rent, and, in addition, there is no provision in the Act that would permit the property owner to regain possession of his property for the purpose of holding off of the market. Section 209 (a) specifies the only grounds upon which a tenant may be evicted. If the property was rented on June 30, 1947, the Act, in effect, requires the owner of apartment suites to rent them, unless he wants to demolish or remodel the building.

Furthermore, the Act unjustly discriminates against defendants as owners of an apartment house. Section 202 in (c) excepts from "housing accommodations," as defined in (b), hotels, motor courts, units constructed or converted after February 1, 1947, and units not rented from February 1, 1945 to January 31, 1947.

It has been held that there is no unreasonable discrimination or classification wher the regulation is of residential property but not of non-residential property. *Taylor v. Brown*, 137 F. 2nd 654. Here, though, is the exemption of some residential property and the regulation of other forms. The distinction between a suite in a hotel, often occupied as a permanent residence, and a suite or furnished room in an apartment building, is only that in the former maid and linen service is included. Either one may or may not include furniture. As to new construction or accommodations not previously rented, there is no distinguishing feature. The discrimination is such that it comes within the principle announced in *Hirabayash v. United States*, 320 U. S. 81, at page 100:

"The Fifth Amendment contains no equal protection clause and it restrains only such discriminatory

legislation by Congress as amounts to denial of due process."

Appellant argues on page 35 of brief that the exclusions are justified because the cost of operation of the exempted units has increased considerably. The Court will take judicial notice, and it appears in the finding of facts (R. 25) that defendants' "cost of operation, of supplies, of repairs and replacements has substantially increased * * *." The Act does not make any provision for the consideration of costs in the fixing of maximum rents, which are fixed definitely as they existed on June 30, 1947.

Such discrimination at least emphasizes the taking of property without due process of law.

Since the saving provisions heretofore declared by the Court (*Bowles v. Willingham, supra,* p. 7) are not found in the Act it follows that it violates the due process clause of the Fifth Amendment.

II.

THE ACT IMPROPERLY DELEGATES LEGISLATIVE POWER.

The Courts have uniformly held that the 1942 Act does not improperly delegate legislative power.

The 1947 Act, however, delegates to the Housing Expediter power to terminate the Act as to controls:

> *Sec. 204 (c).* "The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met."

11 *Am. Jur.*, page 923:

> "The general doctrine as to the inalienability of the lawmaking function applies to the Federal Govern-

ment. Congress cannot delegate to any other body its strictly legislative powers. * * *" "In order that a court may be justified in holding a statute unconstitutional as a delegation of legislative power, it must appear that the power involved is purely legislative in nature—that is, one appertaining exclusively to the legislative department."

Article I, Section 1, Constitution;

United States v. Shreveport Grain & Elevator Co., 287 U. S. 77;

Schechter Poultry Co. v. United States, 295 U. S. 495;

Panama Refining Co. v. Ryan, 293 U. S. 388.

Repeal of a law is an exclusive legislative function. *Western Union Telegraph Co. v. L. & N. R. Co.*, 258 U. S. 13.

This power delegated to the Expediter is an essential legislative power, giving to him the power to in effect repeal the effectiveness of the Act as to controls and regulation. This is not a power that may be delegated and in this respect the Act is unconstitutional.

At the time *Bowles v. Willingham, supra*, was decided, there was no provision in the 1942 Act for decontrol, so of necessity, this feature of delegation was not considered or determined.

III.

CONGRESS WAS WITHOUT CONSTITUTIONAL POWER TO ENACT THE HOUSING AND RENT ACT OF 1947.

A.

Powers of Congress are Limited to Constitutional Grant.

It is a fundamental doctrine of constitutional law that Congress has only such powers as are expressly granted to it by the constitution, together with the implied power to carry the granted powers into execution.

This is so elementary that it would not need to be mentioned were it not for the apparent conflict between

the asserted war powers and the other provisions of the constitution. But this conflict does require a consideration of the fundamentals. The absence of power given to Congress to regulate intra-state affairs and the forbidding to Congress of all powers not granted must be considered in connection with the extent and occasion for exercising war power to so regulate.

United States v. Butler, 297 U. S. 1.

In *Carter v. Carter Coal Company*, 298 U. S. 238, it is stated in Syllabus 7:

> "Those who framed and those who adopted the constitution meant to carve from the general mass of legislative powers, then possessed by the states, only such portions as it was thought wise to confer upon the federal government; and in order that there should be no uncertainty as to what was taken and what was left, the national powers of legislation were not aggregated but enumerated—with the result that what was not expressed by the enumeration remained vested in the states without change or impairment. P. 294."

Syllabus 9:

> "The general government possesses no inherent power over internal affairs of the states; and emphatically not with regard to legislation. P. 295."

In order to make this still more clear the Ninth and Tenth Amendments to the constitution were adopted.

B.

The Constitution Grants No Power to Congress to Regulate Intra-State Affairs, Such as Rents and Rental Property.

There is no express grant in the constitution empowering Congress to regulate intra-state affairs and it has been decided by this Court that the power is not granted in the following respects:

It is held in *Hammer v. Dagenhart*, 247 U. S. 251, that the commerce clause does not authorize Congress to equal-

ize economic conditions in the states or to exercise police power over local trade and manufacture, which power is "always existing expressly reserved to them" (the states) "by the tenth amendment."

It has often been held that "the police power is reserved to the states and that there is no grant thereof to Congress in the constitution." *Keller v. United States*, 213 U. S. 138; 11 *Am. Jur.*, page 989, paragraph 257; *United States v. DeWitt*, 76 U. S. 41; *Hammer v. Dagenhart, supra.*

Nor does a widespread similarity of conditions confer upon Congress the power of regulation. It is stated in *United States v. Butler*, 297 U. S. 1, decided January 6, 1936, quoting from Syllabus 17:

> "Existence of a situation of national concern resulting from similar and widespread local conditions cannot enable Congress to ignore the constitutional limitations upon its own powers and usurp those reserved to the states."

Also in *Schechter Poultry Corporation v. United States*, 295 U. S. 495, decided May 29, 1935, Syllabus 1:

> "Extraordinary conditions, such as an economic crisis, may call for extraordinary remedies, but they cannot create or enlarge constitutional powers." Page 258.

Likewise, an emergency does not supply the power. It can do nothing more than call for the exercise of an existing power.

Home Building & Loan Association v. Blaisdell, 290 U. S. 398, decided January 8, 1934:

Syllabus 1:

> "Emergency does not increase constitutional powers nor diminish constitutional restrictions."
>
> 11 *Am. Jur.*, page 648.

It is also well settled that the fact that a law is a beneficent law does not supply the necessary power for

Congress to so legislate even if the law is for the good of the people or tends to strengthen the government.

Carter v. Carter Coal Company, 298 U. S. 238, at page 291:

"* * * for nothing is more certain than that beneficent aims, however great or well directed, can never serve in lieu of constitutional power."

Also in Syllabus 6:

"The proposition, often advanced and as often discredited, that the power of the federal government inherently extends to all purposes affecting the nation as a whole with which the states severally cannot deal, or deal adequately, and the related notion that Congress, entirely apart from those powers delegated by the Constitution, may enact laws to promote the general welfare, have always been definitely rejected by this court."

United States v. Butler, supra:

Syllabus 1:

"The question in such cases is not what powers the federal government ought to have, but what powers have in fact been given it by the people."

Syllabus 2:

"In Article I, Paragraph 8 Cl. 1 of the Constitution * * * the phrase 'to provide for the general welfare' is not an independent provision empowering Congress generally to provide for the general welfare, but is a qualification defining and limiting the power' to lay and collect taxes. * * *"

To summarize, the power is not conferred by the commerce clause, by police power, by widespread similar local conditions, by beneficent aims of the law, by emergency, by conditions with which the states cannot deal adequately or by anyone's idea as to the powers the federal government should have.

C.

The War Powers Did Not Empower Congress to Enact This Law on June 30, 1947.

It should be noticed that the Act makes no reference to housing shortage, emergency or otherwise, except in decontrol provisions. There is no provision in it looking to alleviating the housing shortage. It concerns rents and rents only, and possession of rental property. It is an entirely new act and is not in any sense an amendment to or continuation of the 1942 act, which concerned both rents and prices and expired according to its own terms.

(1) The power to regulate rents not being given in the Constitution, it is denied by the Ninth and Tenth Amendments.

But it is claimed that the war powers of Congress embrace this power to legislate long after hostilities have ceased and all danger of renewal of the war has passed, on the ground that technical war still exists, peace having not been declared. This negatives the very language of the constitutional provisions which concern war, defense, repelling invasions and suppressing insurrections.

Such regulation is thoroughly foreign to federal power unless it is a part of an all out effort in the interests of national security. The power of Congress to invade the powers reserved to the states is not a technical matter, but goes to the very substance of our dual government.

In 11 *Am. Jur.*, page 869:

> "There are limits to the implied powers of Congress. If the means employed should have no substantial relation to the public objects which government may legally accomplish, if they should be arbitrarily and unreasonably beyond the necessities of the case, or if Congress in the execution of its powers should adopt measures which are prohibited by the constitu-

tion, such enactments would unquestionably be held unconstitutional and void."

Union Bridge Company v. United States, 204 U. S. 364.

The constitutional provision covering war powers, Article I, Section 8, is as follows:

> "To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; to raise and support armies * * *; to provide and maintain a navy; to make rules for the government and regulation of land and naval forces; to provide for the calling forth of the militia to execute the laws of the Union, suppress insurrections and repel invasions; to provide for organizing, forming and disciplining the militia and for governing such part of them as may be employed in the service of the United States, * * *."

These are the express powers, and they are effective at all times, whether war or peace. It has been held repeatedly that they give to Congres well nigh unlimited powers in so far as the defense of the nation is concerned.

The implied power of Congress to enact the particular legislation is not necessarily dependent upon actual war nor upon technical war. It may so legislate before, during or after a war provided it has a substantial relation to the defense of the nation. Congress is the judge of the means to be taken for national defense. In enacting such legislation it has the power to determine and specify the time that it shall expire. Its power continues after cessation of hostilities, and for that matter, after official peace, as to any measures for military preparation or defense. Its power, however, to regulate such economic affairs as rents ceases when such regulation no longer concerns military defense.

The power of Congress, as ordinarily spoken of, must be considered in two different respects:—its power in a validly enacted law to fix the period of time within which

it is to be effective, and its power to enact new measures. As to the first, it may extend the law beyond official peace; but as to the second, the law must concern national security to be valid.

An act such as we are considering is an infringement upon the powers reserved to the states, and the apparently conflicting provisions of the constitution, that is the denial of the power because not delegated, and the implied powers under the war provisions, must be reconciled if the law is to be valid. This is possible only if the law is substantially related to the preservation of the nation. Necessarily, inasmuch as it relies upon war powers, this must be preservation in a military sense and not simply one of economy.

The 1947 Act was adopted long after danger to the national security had ceased and it has no substantial relation to national security.

In *Grancourt v. United States*, 258 Fed. 25:

> "The power to raise and support armies gives to Congress in wartime an authority over every branch of national life, which is well night unlimited * * *. When an army is in training or in the field, every branch of commerce or industry, even the homelife and habits of the people, may be placed under any necessary restraint to facilitate its support."

11 *Am. Jur.*, page 868:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are proper, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

And in *United States v. Casey*, 247 Fed. 362, at page 366:

> "The war power is sovereign, and yet it is not the police power, for it is exercised to preserve the community itself rather than the health, or economy, or morals of a community."

Northern Pacific Railway Company v. North Dakota, 250 U. S. 135, page 149 (a) of the opinion:

> "The complete and undivided war power of the United States is not disputable. * * * On the face of the statutes it is manifest that they were in terms based upon the war power, since the authority they gave arose only because of the existence of war and the right to exert such authority was to cease upon the war's termination."

The other constitutional provisions must be observed, even in time of actual war. *Bowles v. Willingham, supra; United States v. Cohen Grocery Company*, 255 U. S. 81.

The following quotation from 11 *Am. Jur.*, page 870, is pertinent:

> "Even when circumstances may make it desirable to call into operation congressional activity not ordinarily invoked, the exercise of any powers must be evoked, and checked carefully to see if such powers actually exist under the constitutional grants, because extraordinary conditions do not create or enlarge constitutional power, and cannot justify governmental action outside the sphere of constitutional authority."

Wilson v. New, 243 U. S. 332; *Schechter Poultry Corp. v. United States, supra.*

The absolute necessity of maintaining the powers reserved to the states as well as those delegated to the federal government need not be argued. This is summarized in 11 *Am. Jur.*, page 865, paragraph 171:

> "The maintenance of the authority of the states over matters purely local is as essential to the preservation of our institutions as is the conservation of the federal power in all matters entrusted to the nation by the federal constitution."

If this power to enact rent regulatory laws is given to Congress by a technical state of war, Congress would have it within its power to avoid and disregard the constitutional reservation of powers to the states and the people,

as well as to assume and exercise powers the constitution does not grant to it. Congress would thus rise higher than the constitution and would in effect determine for itself what provisions it would observe and what power it would usurp.

There is nothing fanciful about this. It may be illustrated by the statement of the District Court in his opinion in *Lewis v. Anderson*, 72 F. Supp. 119. None of it is necessary for his decision as the offenses with which he was dealing were committed during the time that the 1942 Act was in effect. But the Court says on page 120:

> "Wars have never actually terminated on the day 'cease-fire' orders were given. Many of them continued for decades, not so much in the form of actual fighting, but in the disruption and dislocation which they caused in the life of the nations involved. These facts, which are truisms to any student of history, apply especially to modern warfare as exemplified by the last war. The destruction and dislocation of the economic life of both the victor and the vanquished continue and will continue for years after actual hostilities with Germany and Japan ended. And so those who are in charge of regulating and controlling the economic life of the nations involved in war have the difficult problem of determining when the various controls should come to an end. Wishful and unrealistic thinking call for immediate cessation of all government interference with economic life. Prudent statesmanship, economic or other, realizes the danger of immediate decontrol—for economic life cannot stand sudden shocks. Adjustment from war to peacetime economy, if it is to be helpful, must be gradual."

Whether this is good economics or not it is an expression of the theory upon which Congress endeavors to regulate rents. Incidentally, all the court decided in this case was that an act of Congress does not terminate unless the statute says so.

The situation is serious. Sustaining the power of Congress to enact the Act at the time and under the conditions,

would enormously increase the power of Congress beyond the plain meaning of the constitution. Not only as to the length of time it can continue to enact local regulations, but also as to the character and extent of the regulations that it could impose. Certainly there is no intention embodied in the constitution that Congress shall be the judge of its own powers.

(2) Validity of the Act is Not Supported by Prior Decisions.

It is submitted that this Court has not in any decided cases laid down a principle under which this act can be sustained. Each case is distinguishable upon the facts and the statements of the Court do not necessarily apply here.

In each of the following cases cited in appellant's brief, the issue was whether a validly enacted war measure had expired because of the armistice. *United States v. Armstrong*, 265 Fed. 683; *Hamilton v. Kentucky Distillery & Warehouse Co.*, 251 U. S. 146 (The Act prohibited "the liquor traffic as a means of increasing our war efficiency"); *Ruppert v. Caffey*, 251 U. S. 264 (decided on the same ground); *Ex parte Sichofsky*, 273 Fed. 694; *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U. S. 111; *Kahn v. Anderson*, 255 U. S. 1; *Vincenti v. United States*, 272 Fed. 114 (War Prohibition Act enacted for the

> "purpose of conserving the man power of the nation and to increase the efficiency in the production of arms and munitions, ships, food and clothing for the army and navy * * *.")

and *Commercial Trust Co. v. Miller*, 262 U. S. 51.

Some of the acts considered fixed the termination at the conclusion of the war and others at a given period thereafter, or after demobilization, to be determined and proclaimed by the President. None of them consider the power to enact except for a war purpose. They do uphold the power of Congress to specify in a war act the

time of its expiration. As stated in *Commercial Trust Co. v. Miller, supra,*

> "The power which declared the necessity is the power to declare its cessation, what the cessation requires."

They also hold that none of the acts became ineffective by changed conditions, before the time specified for termination.

These issues are not involved here, as the question is the power to enact. It is quite apparent that the Court in construing a law to determine when it expires is not laying down a principle necessarily applicable to the expiration of the war powers of Congress to enact new regulatory laws. When the Court says in such a case that the end of the war means the official declaration of its end, it is not necessarily saying that the war power to enact new legislation necessarily continues until that time.

The power of Congress to legislate concerning the armed forces and make rules governing them is always effective—the Constitution is explicit. The control of entry of aliens and over enemy property, of course, continues until official peace and thereafter until all such matters are resolved.

The war power to regulate inter-state affairs is another matter. The 1942 Act provided for a definite date of termination. When the last extended date passed the act terminated. The principle that Congress may fix the date of termination does not help the 1947 Act.

One of the first decided cases that dealt with the war powers is *Stewart v. Kahn,* 78 U. S. 493. There is a statement by the Court, page 506:

> "It carries with it inherently the power to guard against the immediate renewal of the conflict, and to remedy the evils which have arisen from its rise and progress."

The case itself concerned an act passed during active hostilities and it was clearly war legislation and was so held. Its purpose was to save the rights of citizens to whom

the courts of the states in rebellion were not open, by extending the period of the statute of limitations by the time during which the courts were not available. The action was brought after the courts of the State of Louisiana were opened to all citizens and after the termination of the Civil War. The law itself fixed the extended time. The evil the court speaks of was that the courts were not open to a resident of the North during the hostilities. The Court, of course, in 1867 did not have in mind any situation comparable to the rent act and was not considering the power to legislate after national danger had ceased. It dealt with a situation that was created by the rebellion and at the very beginning of the war. Its correction was completed by an extension of the time within which to file a lawsuit in a court that was not open to citizens of the North during hostilities.

The 1942 Act was enacted during actual and critical wartime and was a valid exercise of the war powers of Congress. This was declared in numerous cases and apparently was never seriously questioned. *Yakus v. United States, supra*, 422. *Bowles v. Willingham, supra.* These are the authoritative cases sustaining the 1942 Act but the principal questions in the cases concerned a claim that the due process clause was violated and that the delegation was unreasonable.

These cases, however, do not furnish authority for sustaining the power of Congress on June 30, 1947, to regulate rents. The nation was still engaged in all-out war on the day the decisions were announced. The invasion of Europe had not even been launched. It was a serious and critical period of the war.[1]

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[1] The cases cited in paragraph on pages 9 and 10, appellant's brief, all pass upon the 1942 Act, as do *Bowles v. Ormesher Bros.*, 65 F. Supp. 791, decided May 16, 1946, *Lewis v. Anderson*, 72 F. Supp. 119, *Bowles v. Severinsky*, 65 F. Supp. 809, and *Porter v. Granite State Packing Co.*, 155 F. 2nd 786, cited on page 16.

(Continued on following page)

In the first case it is stated on page 419:

"The Act was adopted as a temporary wartime measure and provides in Paragraph 1 (b) for its termination on June 30, 1943, unless sooner terminated by presidential proclamation or concurrent resolution of Congress. By the amendatory act of October 2, 1942 it was extended to June 30, 1944. Section 1 (a) declares that the act is 'in interest of national defense and security and necessary to the effective prosecution of the present war; * * *.'"

The 1947 Act became a law some twenty-three months after the surrender of Japan and six months after the President had proclaimed the cessations of the hostilities. The Act is a new law and had for its purpose only the regulation of rents and recovery of possession of rental property. It does not declare a *housing* emergency exists —merely an emergency. The declaration of Congress was vitally different from that in the 1942 Act.

(3) Congressional Declaration Negatives a Defense Purpose.

It is asserted that Congress does not need to make any declaration in order to support its legislation. Be this as it may, Congress does seem to customarily include a declaration in acts that it passes as war measures, and apparently for the purpose of giving them a basis in law. The decided cases in which the 1942 Act was considered time and again refer to the congressional declarations and attach great importance to the war purpose disclosed by them in sustaining its validity.

It is well established that "a declaration by a legislature concerning public conditions that of necessity and

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(*Continued from preceding page*)

Porter v. Shibe, 158 F. 2nd 68 and *Creedon v. Warner-Holding Co.*, 162 F. 2nd 115, cited on same page, uphold the retroactive provision of the Price Extension Act of 1946. In *Creedon v. Stratton*, 74 F. Supp. 170, cited on page 15, the court says the constitutional question was abandoned in the briefs. The unreported District Court decisions cited are not available.

duty it must know is entitled to great respect." *Block v. Hirsh*, 256 U. S. 135. *East New York Bank v. Hahn*, 326 U. S. 230.

The 1942 Act, as stated, declared it to be "necessary for the effective prosecution of the present war" and to be "in the interest of national defense and security." (Sec. 1 (a).) The 1947 Act contains no such declaration and makes no reference to war, defense or security. This omission, by the same principle, is entitled to great respect. It is important also to note that it declares in Section 201 (a) the continuance of federal controls "to be inconsistent with a return to peacetime economy," and in (b) "that for the prevention of inflation and the achievement of a reasonable stability in the general level of rents during the transition period * * * it is necessary for a limited time to impose certain restrictions upon rents * * *."

What construction is to be placed upon this declaration, especially as compared to the declaration in the 1942 Act? The Price Control Extension Act enacted on July 25, 1946, speaks of the "return to a peacetime economy." The 1947 Act became a law almost a year later. It seems that the peacetime economy exists concurrently with the technical war.

Appellant's brief, p. 17, endeavors to inject into the Act a declaration invoking the war power by its reference in Section 201 (a) and (b) to the Price Control Extension Act of 1946. The reference, however, is specific and is to the declaration regarding controls in the return to a peacetime economy, which became Sec. 1 A (a) (2) in the 1942 Act as amended.

(4) The Housing and Economic Situation Does Not Supply the Power.

In the understanding of the Appellees there is no issue here as to economic conditions and it is not vital whether the rent situation has cleared up. In any event it does not supply the power unless related to the national defense.

lengthy quotations from Congressional hearings are set forth by appellant. They have little weight, because Congress included its declarations in the law it actually enacted.

The actual situation relative to defense activities and peacetime economy may be illustrated by the Cleveland area. In 1942 to the end of hostilities not only were men and women being taken into the armed services in large numbers, but the productive facilities of the area were devoted almost exclusively to furnishing munitions and instruments of war, and clothing, food and supplies for the army, navy and air forces. In June, 1947, all of this activity had ceased and the government was disposing as surplus of the materials the area had furnished. Definitely, the activities then as now were in a peacetime economy.

But it is argued that there is a housing emergency and that in order to control inflation and to preserve a place to live for the people in defense areas Congress must control rents, keep rents at their 1941 level and give tenants a non-contract lease for the period of the law. There are serious questions as to the effect of the law; it certainly does not tend to create more places to live. Also it is urged that although there is a small vacancy rate, an uncontrolled increase in rents would result in enormous eviction pressure. But again, merely because Congress deems the law to be beneficent or to strengthen the government, or to be useful in correcting an economic crisis, does not enlarge its power or supply a basis for using its war powers.

Schechter Poultry Corporation v. United States, supra; Home Building and Loan Association v. Blaisdell, supra; Carter v. Carter Coal Co., supra; United States v. Butler, supra.

The Act clearly related to internal economic situation, not to defense.

For these reasons appellees do not consider the data relative to housing in appellant's brief (pp. 18, 19, 21 to 30) to have any bearing on the issue here. The wisdom of the

legislation is a matter for Congress to determine, but it must first have the power.

There is a pertinent statement as to the exercise of power by Congress in *Linder v. United States*, 268 U. S., page 5, Syllabus 1:

> "Any provision of an Act of Congress ostensibly under power granted by the constitution, not naturally and reasonably adapted to the effective exercise of such power, but solely to the achievement of something plainly within the power reserved to the states, is invalid and cannot be enforced."

CONCLUSION.

The judgment below should be affirmed.

Respectfully submitted,

PAUL S. KNIGHT,
Attorney for Appellees.

APPENDIX.

Housing and Rent Act of 1947.

(Pub. L. 129, 80th Cong., 1st Sess.)

TITLE II—MAXIMUM RENTS

DECLARATION OF POLICY.

SEC. 201. (a) The Congress hereby reaffirms the declaration in the Price Control Extension Act of 1946 that unnecessary or unduly prolonged controls over rents would be inconsistent with the return to a peacetime economy and would tend to prevent the attainment of the goals therein declared.

(b) The Congress therefore declares that it is its purpose to terminate at the earliest practicable date all Federal restrictions on rents on housing accommodations. At the same time the Congress recognizes that an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period, as well as the attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in defense-rental areas. Such restrictions should be administered with a view to prompt adjustments where owners of rental housing accommodations are suffering hardships because of the inadequacies of the maximum rents applicable to their housing accommodations, and under procedures designed to minimize delay in the granting of necessary adjustments, which, so far as practicable, shall be made by local boards with a minimum of control by any central agency.

(c) To the end that these policies may be effectively carried out with the least possible impact on the economy pending complete decontrol, the provisions of this title are enacted.

DEFINITIONS.

SEC. 202. As used in this title—

(a) The term "person" includes an individual, corporation, partnership, association, or any other organized

group of persons, or a legal successor or representative of any of the foregoing.

(b) The term "housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes (including houses, apartments, rooming- or boarding-house accommodations, and other properties used for living or dwelling purposes) together with all privileges, services, furnishings, furniture, and facilities connected with the use or occupancy of such property.

(c) The term "controlled housing accommodations" means housing accommodations in any defense-rental area, except that it does not include—

(1) those housing accommodations, in any establishment which is commonly known as a hotel in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; or

(2) any motor court, or any part thereof; or any tourist home serving transient guests exclusively, or any part thereof; or

(3) any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect, or (B) which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations.

(d) The term "defense-rental area" means any part of any area designated under the provisions of the Emer-

gency Price Control Act of 1942, as amended, prior to March 1, 1947, as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of such Act, in which maximum rents were being regulated under such Act on March 1, 1947.

(e) The term "rent" means the consideration demanded or received in connection with the use or occupancy or the transfer of a lease of any housing accommodations.

TERMINATION OF RENT CONTROL UNDER EMERGENCY PRICE CONTROL ACT OF 1942.

SEC. 203. (a) After the effective date of this title, no maximum rents shall be established or maintained under the authority of the Emergency Price Control Act of 1942, as amended, with respect to any housing accommodations.

(b) On the termination of rent control under this title all records and other data used or held in connection with the establishment and maintenance of maximum rents by the Housing Expediter, and all predecessor agencies, shall, on request, be delivered without reimbursement to the proper officials of any State or local subdivision of government that may be charged with the duty of administering a rent control program in any State or local subdivision of government to which such records and data may be applicable: *Provided, however,* That any such records or data shall be so made available subject to recall for use in carrying out the purposes of this title.

RENT CONTROL UNDER THIS TITLE.

SEC. 204. (a) The Housing Expediter shall administer the powers, functions, and duties under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until February 29, 1948.

(b) During the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent

for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order make such adjustments in such maximum rents as may be necessary to correct inequities or further to carry out the purposes and provisions of this title: *And provided further,* That in any case in which a landlord and tenant, on or before December 31, 1947, voluntarily enter into a valid written lease in good faith with respect to any housing accommodations for which a maximum rent is in effect under this section and such lease takes effect after the effective date of this title and expires on or after December 31, 1948, and if a true and duly executed copy of such lease is filed, within fifteen days after the date of execution of such lease, with the Housing Expediter, the maximum rent for such housing accommodations shall be, as of the date such lease takes effect, that which is mutually agreed between the landlord and tenant in such lease if it does not represent an increase of more than 15 per centum over the maximum rent which would otherwise apply under this section. In any case in which a maximum rent for any housing accommodations is established pursuant to the provisions of the last proviso above, such maximum rent shall not thereafter be subject to modification by any regulation or order issued under the provisions of this title. No housing accommodations for which a maximum rent is established pursuant to the provisions of the last proviso above shall be subject, after December 31, 1947, to any maximum rent established or maintained under the provisions of this title.

(c) The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met.

(d) The Housing Expediter is authorized to issue such regulations and orders, consistent with the provisions

of this title, as he may deem necessary to carry out the provisions of this section and section 202 (c).

(e) (1) The Housing Expediter is authorized and directed to create in each defense-rental area, or such portion thereof as he may designate, a local advisory board, each such board to consist of not less than five members who are representative citizens of the area, to be appointed by the Housing Expediter, from recommendations made by the respective Governors. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the board shall make recommendations to the officials administering this title within its area. The local boards may make such recommendations to the Housing Expediter as they deem advisable with respect to the following matters:

(A) Decontrol of the defense-rental area or any portion thereof;

(B) The adequacy of the general rent level in the area; and

(C) Operations generally of the local rent office, with particular reference to hardship cases.

(2) The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

(3) Within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropriate action shall promptly be taken to carry such recommendation into effect.

(4) Immediately upon the enactment of this Act the Housing Expediter shall communicate with the governors

of the several States advising them of the provisions of this subsection and of the number and location of defense-rental areas in their respective States, and requesting their cooperation in carrying out such provisions.

(f) The provisions of this title shall cease to be in effect on February 29, 1948.

RECOVERY OF DAMAGES BY TENANTS.

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment, for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided*, That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same plaintiff prior to the institution of the action in which such judgment was rendered.

PROHIBITION AND ENFORCEMENT.

SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

MAINTENANCE OF ACTIONS FOR CERTAIN ALLEGED PAST VIOLATIONS.

SEC. 207. No action or proceeding, involving any alleged violation of Maximum Price Regulation Numbered 188, issued under the Emergency Price Control Act of 1942, as amended, shall be maintained in any court, or judgment thereon executed or otherwise proceeded on, if a court of competent jurisdiction has found, or by opinion has declared, that the person alleged to have committed such violation acted in good faith and that application to such person of the "actual delivery" provisions of such regulation would result or has resulted in extreme hardship.

EVICTION OF TENANTS.

SEC. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless—

(1) under the law of the State in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;

(2) the landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations;

(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;

(4) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of substantially altering, remodeling, or demolishing them and replacing them with new construction, and the altering or remodeling is reasonably necessary to protect and conserve the housing accommodations and cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by Federal, State, or local law for the alterations, remodeling, or any construction planned; or

(5) the housing accommodations are nonhousekeeping, furnished housing accommodations located within a single dwelling unit not used as a rooming or boarding house and the remaining portion of which is occupied by the landlord or his immediate family.

(b) Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided,* That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants

of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities, exceeds the allowable maximum.

SUPREME COURT OF THE UNITED STATES

No. 486.—October Term, 1947.

Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, v. The Cloyd W. Miller Company, a Corporation, and Cloyd W. Miller.	Appeal from the District Court of the United States for the Northern District of Ohio.

[February 16, 1948.]

Mr. Justice Douglas delivered the opinion of the Court.

The case is here on a direct appeal, Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. § 349 (a), from a judgment of the District Court holding unconstitutional Title II of the Housing and Rent Act of 1947. Pub. L. 129, 80th Cong., 1st Sess., — U. S. C. —.

The Act became effective on July 1, 1947, and the following day the appellee demanded of its tenants increases of 40% and 60% for rental accommodations in the Cleveland Defense-Rental Area, an admitted violation of the Act and regulations adopted pursuant thereto.[1] Appellant thereupon instituted this proceeding under § 206 (b)

[1] Section 204 (b) of the Act provides that "no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947." Controlled Housing Rent Regulation, 12 Fed. Reg. 4331, contains similar provisions. §§ 2 (a), 4 (a). Provisions of this statute and regulation, not here material, allow adjustment of maximum rentals when necessary to correct inequities and permit a 15% increase if negotiated between landlord and tenant and incorporated in a lease of a designated term.

of the Act[2] to enjoin the violations. A preliminary injunction issued. After a hearing it was dissolved and a permanent injunction denied.

The District Court was of the view that the authority of Congress to regulate rents by virtue of the war power (see *Bowles* v. *Willingham*, 321 U. S. 503) ended with the Presidential Proclamation terminating hostilities on December 31, 1946,[3] since that proclamation inaugurated "peace-in-fact" though it did not mark termination of the war. It also concluded that even if the war power continues, Congress did not act under it because it did not say so, and only if Congress says so, or enacts provisions so implying, can it be held that Congress intended to exercise such power. That Congress did not so intend, said the District Court, follows from the provision that the Housing Expediter can end controls in any area without regard to the official termination of the war,[4] and from the fact that the preceding federal rent

[2] Section 206 (a) makes it unlawful "to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204." Section 206 (b) authorized the Housing Expediter to apply to any federal, state, or territorial court of competent jurisdiction for an order enjoining "any act or practice which constitutes or will constitute a violation of subsection (a) of this section."

[3] Proclamation 2714, 12 Fed. Reg. 1. That proclamation recognized that "a state of war still exists." On July 25, 1947, on approving S. J. Res. 123 terminating certain war statutes, the President issued a statement in which he declared that "The emergencies declared by the President on September 8, 1939, and May 27, 1941, and the state of war continue to exist, however, and it is not possible at this time to provide for terminating all war and emergency powers."

[4] Section 204 (c) provides: "The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met."

control laws (which were concededly exercises of the war power) were neither amended nor extended. The District Court expressed the further view that rent control is not within the war power because "the emergency created by the housing shortage came into existence long before the war." It held that the Act "lacks in uniformity of application and distinctly constitutes a delegation of legislative power not within the grant of Congress" because of the authorization to the Housing Expediter to lift controls in any area before the Act's expiration. It also held that the Act in effect provides "low rentals for certain groups without taking the property or compensating the owner in any way." See — F. Supp. —.

We conclude, in the first place, that the war power sustains this legislation. The Court said in *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146, 161, that the war power includes the power "to remedy the evils which have arisen from its rise and progress" and continues for the duration of that emergency. Whatever may be the consequences when war is officially terminated,[5] the war power does not necessarily end with the cessation of hostilities. We recently held that it is adequate to support the preservation of rights created by wartime legislation, *Fleming* v. *Mohawk Wrecking & Lumber Co.*, 331 U. S. 111. But it has a broader sweep. In *Hamilton* v. *Kentucky Distilleries Co.*, *supra*, and *Ruppert* v. *Caffey*, 251 U. S. 264, prohibition laws which were enacted after the Armistice in World War I were sustained as exercises of the war power because they conserved manpower and increased efficiency of production in the critical days during the period of demobilization, and helped to husband the supply of grains and cereals depleted by the war effort. Those cases followed the reasoning of *Stewart* v. *Kahn*, 11 Wall. 493, which held

[5] See *Commercial Trust Co.* v. *Miller*, 262 U. S. 51, 57.

that Congress had the power to toll the statute of limitations of the States during the period when the process of their courts was not available to litigants due to the conditions obtaining in the Civil War.

The constitutional validity of the present legislation follows *a fortiori* from those cases. The legislative history of the present Act makes abundantly clear that there has not yet been eliminated the deficit in housing which in considerable measure was caused by the heavy demobilization of veterans and by the cessation or reduction in residential construction during the period of hostilities due to the allocation of building materials to military projects.[6] Since the war effort contributed heavily to that deficit, Congress has the power even after the cessation of hostilities to act to control the forces that a short supply of the needed article created. If that were not true, the Necessary and Proper

[6] See H. R. Rep. No. 317, 80th Cong., 1st Sess., pp. 1, 2, 3, 10–11. The Report states, p. 2:

"There are several factors, in addition to the normal increase in population, which have contributed to the existing housing shortage. These include demobilization of a large number of veterans, shifts in population, less intensive use of housing accommodations, amount of new housing construction, trend away from construction of rental units, and change from tenant to owner occupancy."

As to the effect of demobilization of veterans the Report states, p. 2:

"Heavy demobilization of members of our armed forces, particularly in late 1945 and the first half of 1946, made effective an important demand for housing accommodations. In 1945 an estimated 6,279,000 veterans of World War II were returned to civilian life, in 1946 the number so returned was 5,659,000, and in 1947 to February 28 an additional 212,000 veterans were demobilized. Statistics are not available as to the number of new family units created by returning veterans but undoubtedly the figure is substantial and in many cases creation of new family units was delayed until these veterans were returned to civilian life. The importance and delayed

Clause, Art. I, § 8, cl. 18, would be drastically limited in its application to the several war powers. The Court has declined to follow that course in the past. *Hamilton* v. *Kentucky Distilleries Co.*, *supra*, pp. 155, 156; *Ruppert* v. *Caffey*, *supra*, pp. 299, 300. We decline to take it today. The result would be paralyzing. It would render Congress powerless to remedy conditions the creation of which necessarily followed from the mobilization of men and materials for successful prosecution of the war. So to read the Constitution would be to make it self-defeating.

We recognize the force of the argument that the effects of war under modern conditions may be felt in the economy for years and years, and that if the war power can be used in days of peace to treat all the wounds which war inflicts on our society, it may not only swallow up all other powers of Congress but largely obliterate the Ninth and the Tenth Amendments as well. There are no such implications in today's decision. We deal here with the consequences of a housing deficit greatly intensified during the period of hostilities by the war effort. Any power, of course, can be abused. But we cannot assume that Congress is not alert to its consti-

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impact of the 11,938,000 veterans returned to civilian life in 1945 and 1946 on an already acute housing shortage is readily apparent."

The effect of the war upon the construction of new dwelling units is shown by the following table:

Total non-farm dwelling units constructed

1937	336,000	1943	350,000
1938	406,000	1944	169,000
1939	515,000	1945	247,000
1940	603,000	1946	776,200
1941	715,000	1947 (11 months)	799,000
1942	497,000		

The figures for the years 1937–1945 inclusive are taken from H. R. Rep. No. 817, *supra*, p. 3. Those for 1946 and 1947 are taken from U. S. Bureau of Labor Statistics, Construction, Dec. 1947, p. 4.

tutional responsibilities. And the question whether the war power has been properly employed in cases such as this is open to judicial inquiry. *Hamilton* v. *Kentucky Distilleries Co., supra; Ruppert* v. *Caffey, supra.*

The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise. Here it is plain from the legislative history that Congress was invoking its war power to cope with a current condition of which the war was a direct and immediate cause.[7] Its judgment on that score is entitled to the respect granted like legislation enacted pursuant to the police power. See *Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Co.* v. *Feldman*, 256 U. S. 170; *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543.

Under the present Act the Housing Expediter is authorized to remove the rent controls in any defense-rental area if in his judgment the need no longer exists by reason of new construction or satisfaction of demand in other ways.[8] The powers thus delegated are far less extensive than those sustained in *Bowles* v. *Willingham, supra*, pp. 512–515. Nor is there here a grant of unbridled administrative discretion. The standards prescribed pass muster under our decisions. See *Bowles* v. *Willingham, supra*, pp. 514–516, and cases cited.

Objection is made that the Act by its exemption of certain classes of housing accommodations[9] violates the

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[7] See H. R. Rep. No. 317, *supra*, note 6, and statement of Representative Wolcott, Chairman of the House Committee on Banking and Currency which reported the rent bill, 93 Cong. Rec. 4395.

[8] See note 4, *supra*.

[9] Sec. 202 (c) provides: "The term 'controlled housing accommodations' means housing accommodations in any defense-rental area, except that it does not include—(1) those housing accommodations, in any establishment which is commonly known as a hotel in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnish-

Fifth Amendment. A similar argument was rejected under the Fourteenth Amendment when New York made like exemptions under the rent-control statute which was here for review in *Marcus Brown Co.* v. *Feldman, supra,* pp. 195, 198–199. Certainly Congress is not under greater limitations. It need not control all rents or none. It can select those areas or those classes of property where the need seems the greatest. See *Barclay & Co.* v. *Edwards,* 267 U. S. 442, 450. This alone is adequate answer to the objection, equally applicable to the original Act sustained in *Bowles* v. *Willingham, supra,* that the present Act lacks uniformity in application.

The fact that the property regulated suffers a decrease in value is no more fatal to the exercise of the war power (*Bowles* v. *Willingham, supra,* pp. 517, 518) than it is where the police power is invoked to the same end. See *Block* v. *Hirsh, supra.*

Reversed.

MR. JUSTICE FRANKFURTER concurs in this opinion because it decides no more than was decided in *Hamilton* v. *Kentucky Distilleries Co.,* 251 U. S. 146, and *Jacob Ruppert* v. *Caffey,* 251 U. S. 264, and merely applies those decisions to the situation now before the Court.

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ing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; or (2) any motor court, or any part thereof; or any tourist home serving transient guests exclusively, or any part thereof; or (3) any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect, or (B) which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations."

SUPREME COURT OF THE UNITED STATES

No. 486.—October Term, 1947.

Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, *v.* The Cloyd W. Miller Company, a Corporation, and Cloyd W. Miller.	Appeal from the District Court of the United States for the Northern District of Ohio.

[February 16, 1948.]

Mr. Justice Jackson, concurring.

I agree with the result in this case, but the arguments that have been addressed to us lead me to utter more explicit misgivings about war powers than the Court has done. The Government asserts no constitutional basis for this legislation other than this vague, undefined and undefinable "war power."

No one will question that this power is the most dangerous one to free government in the whole catalogue of powers. It usually is invoked in haste and excitement when calm legislative consideration of constitutional limitation is difficult. It is executed in a time of patriotic fervor that makes moderation unpopular. And, worst of all, it is interpreted by the Judges under the influence of the same passions and pressures. Always, as in this case, the Government urges hasty decision to forestall some emergency or serve some purpose and pleads that paralysis will result if its claims to power are denied or their confirmation delayed.

Particularly when the war power is invoked to do things to the liberties of people, or to their property or economy that only indirectly affect conduct of the war and do not relate to the management of the war itself, the constitutional basis should be scrutinized with care.

I think we can hardly deny that the war power is as valid a ground for federal rent control now as it has been at any time. We still are technically in a state of war. I would not be willing to hold that war powers may be indefinitely prolonged merely by keeping legally alive a state of war that had in fact ended. I cannot accept the argument that war powers last as long as the effects and consequences of war for if so they are permanent—as permanent as the war debts. But I find no reason to conclude that we could find fairly that the present state of war is merely technical. We have armies abroad exercising our war power and have made no peace terms with our allies not to mention our enemies. I think the conclusion that the war power has been applicable during the lifetime of this legislation is unavoidable.